

OVERSIGHT OF U.S. GOVERNMENT INTELLIGENCE FUNCTIONS

HEARINGS BEFORE THE COMMITTEE ON GOVERNMENT OPERATIONS UNITED STATES SENATE NINETY-FOURTH CONGRESS

SECOND SESSION

ON

S. 317

TO ESTABLISH A JOINT COMMITTEE ON INTELLIGENCE OVERSIGHT

S. 189

**RELATING TO THE NECESSITY OF REORGANIZING CERTAIN DE-
PARTMENTS AND AGENCIES OF THE EXECUTIVE BRANCH, AND
FOR OTHER PURPOSES**

S. Con. Res. 4

**TO ESTABLISH A JOINT COMMITTEE ON INFORMATION AND
INTELLIGENCE**

S. 2893

**TO ESTABLISH A STANDING COMMITTEE OF THE SENATE ON
INTELLIGENCE ACTIVITIES, AND FOR OTHER PURPOSES**

S. 2865

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JANUARY 21, 22, 23, 26, 27; FEBRUARY 2, 3, 5, AND 6, 1976

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OVERSIGHT OF U.S. GOVERNMENT INTELLIGENCE FUNCTIONS

WEDNESDAY, JANUARY 21, 1976

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m. in room 3302, the Dirksen Senate Office Building, Hon. Abraham Ribicoff, chairman of the committee, presiding.

Present: Senators Ribicoff, Allen, Glenn, Nunn, Percy, Weicker, and Brock.

Staff members present: Richard A. Wegman, chief counsel and staff director; Paul Hoff, counsel; Paul Rosenthal, assistant counsel; Marilyn A. Harris, chief clerk, and Elizabeth A. Preast, assistant chief clerk.

Chairman RIBICOFF. The committee will be in order.

OPENING STATEMENT OF SENATOR RIBICOFF

Today, the Government Operations Committee begins 8 days of hearings on legislation before this committee to create a new intelligence oversight committee.

It is my hope that these hearings can explore ways to improve the policies of the future, rather than dwell on the mistakes of the past.

As far as I am concerned, the Church committee has done an outstanding job. I personally do not intend to go over all the work that the Church committee has been doing over this past year.

Of course, there is no restriction on other members of the committee.

I am interested in the future and not in the past.

Disclosures during the past year of illegal or improper actions by the intelligence agencies have deeply disturbed the Nation. The Senate select committee, under the very able leadership of Senators Church and Tower, as well as other investigations, have performed an invaluable service by exploring some of these very serious allegations of illegal or improper activities.

This country needs a strong and effective intelligence program. Intelligence is essential to cope with threats to world peace abroad and reduce the threat of crime and political terrorism at home.

But what kind of intelligence program, under what controls, and under how much secrecy? We must consider what we as a Nation want our intelligence agencies to do in today's world.

To what extent should there be secrecy in an open democratic society?

(1)

To what extent should there be covert operations in a society based on law? To what extent in a democracy should agency action not be subject to review by Congress and the public?

The intelligence agencies do not now have the full trust of the American public. The general consensus and understanding which prevailed when the National Security Act was passed in 1947 no longer prevails.

Until full trust and confidence in our intelligence agencies is restored, the country will be unable to conduct a fully effective intelligence program. As long as there is basic disagreement about the goals or policies of the Government's intelligence program, disclosures of sensitive information will occur.

Creation of a new intelligence oversight committee can provide a forum to begin restoring the trust and confidence the intelligence agencies must have to operate effectively.

I strongly favor creation of a new intelligence committee with adequate power to assure effective oversight of the intelligence agencies. I am not committed, however, to any particular structure, or any particular formula, to achieve this goal.

A separate committee with responsibilities in the area of intelligence is not a new idea. Special Government commissions have recommended such a step as long ago as the Hoover Commission in 1955, and as recently as the 1975 Commission on the Organization of the Government for the Conduct of Foreign Policy headed by Mr. Robert Murphy.

Over 150 bills have been introduced in Congress since 1947.

The disclosures of the last year, however, have given great new urgency to these proposals. The 1975 Rockefeller Commission on the CIA recommended creation of a congressional oversight committee. Today we will hear others recommend a similar step on behalf of members of the Senate Select Committee on Intelligence Oversight. In July, the full Senate set itself a deadline of March 1 of this year to consider and act upon proposals to change the way the Senate oversees the intelligence activities of the Government.

The public clearly wants Congress to act. A recent opinion poll indicated that while 78 percent believe it is very important to have the best foreign intelligence agency in the world, the public also believes by a 66 percent to 18 percent margin that both Congress and the White House should monitor the CIA more closely.

Congress can never run the intelligence program itself. Day-to-day oversight and direction must come from within the executive branch. Congress should exercise oversight over covert operations and ask hard questions about the need for such operations.

It must examine the economy and efficiencies of the intelligence programs which cost billions each year, and eliminate any unnecessary duplication or fragmentation among the maze of agencies now involved in intelligence. It must make sure that even good men, with the best of intentions, do not exceed the charters of the intelligence agencies or violate the constitutional rights of Americans.

At the same time, it is essential that legislation creating a new oversight committee recognize the need to protect the confidentiality of some information. Some secrecy is vital if either the intelligence agencies, or the new intelligence committee, are to do their work effectively.

The challenge is to find a way to reconcile the need for secrecy with the right of the people in a democracy and the right of Congress under

our system of checks and balances, to oversee the activities of our intelligence agencies.

The challenge is a large one that must be approached with an open mind. The answers must be thoughtful and responsible.

Among the specific questions these hearings must consider are those concerning the following:

First, should the committee be a joint committee of Congress or a permanent committee of the Senate, should Senators serve on the committee on a rotating basis, and should the legislation explicitly reserve seats on the committee for members of other committees?

Second, should the new committee have jurisdiction over legislation, including authorization legislation, involving the Government's national intelligence activities?

Should the entire intelligence activities of the Government be subject to annual authorization legislation reviewed by the new committee?

Third, should the committee have jurisdiction over domestic intelligence activities and, if so, —what type of jurisdiction?

Fourth, to what extent should the legislation spell out the extent and nature of the duty of the executive branch to keep the new committee fully and currently informed of its activities and plans?

Fifth, should the bill amend the procedures now governing notice to Congress of any covert actions undertaken by the executive branch? When should such notice be provided?

Sixth, what, if any thing, should the legislation say about the standards and safeguards that should govern the committees disclosure of sensitive information to other Senators, and to the general public?

There are no simple answers to these and similar questions. No legislation can resolve every problem, quiet every fear. What Congress must do is agree on a basic framework and basic principles. These problems can then be resolved in a sensible and responsible way in light of changing circumstances.

In the next 8 days we will hear from more than 25 witnesses with significant experience in the intelligence area.

The Nation is indebted to Senator Church and Senator Tower and the entire collective Senate committee and their staff. We are honored today to have as our first witness Senator Mansfield who has always been perceptive and many years ahead of where the Congress and the country goes.

Senator Percy, do you have any comments?

Senator PERCY. I would like to join, Mr. Chairman, in welcoming Senator Mansfield. I think his appearance this morning emphasizes that these are among the most important hearings that we will hold in the Congress this year.

I certainly join in paying tribute to Senator Church, Senator Tower and the members of the Select Committee on Intelligence for the diligence with which they have pursued their tasks.

The one thing that we all would very much agree on is the need for an outstanding intelligence service. It is indispensable for us to carry out our foreign policy. It is indispensable for us to preserve the security and defense of the Nation.

As a Senator, I have benefited invaluablely over 9 years through the services of the Central Intelligence Agency. The work that it did

with some of us in presenting facts to us on the ABM is one instance. They ended up helping save this Nation a \$60 billion unnecessary expenditure.

The assistance and help that I have had, and other Senators have had when we prepared for trips to the Middle East, the Soviet Union, and China and so forth have been absolutely invaluable. However, we do have to put to ourselves today and this year in the Congress several very basic questions.

Is the intelligence community best organized to provide the information needed for our foreign policy decisionmaking and to protect our national security?

Are the mandates and responsibilities of the various component parts of the intelligence community sufficiently clear to define their roles and to prevent illegal actions or abuse of individual rights?

Third: What we are concerned with here today, the immediate task at hand, what should the role of Congress be in evaluating and helping to give guidance to the intelligence community of this country? The organization and mandate of the intelligence community will be subject to debate and resolution later in this Congress.

Today, we focus on this third question and we try to better define, as a result of the very careful hearings carried out by the Select Intelligence Committee, how can we best organize ourselves in Congress?

As an individual member of this panel, I will certainly try to recognize that the executive branch, and the President in particular, has a clear constitutional responsibility in the foreign relations field and in the field of national defense. There is a partnership that has been developed, and must continue to be developed, between the executive branch and the Congress. The question is how shall we redefine our role so that we become better informed partners, more constructive partners, so that we carry out our exercise of our oversight responsibilities over the intelligence community in a more effective manner.

Senator Baker will point out in the testimony he gives today that it is very difficult to achieve the balance between the requirements of national security and insuring that the Congress fulfills its oversight role and has access to necessary information to enable it to fulfill its responsibilities.

These are the objectives and goals that we have.

Finally, Mr. Chairman, I ask unanimous consent that an article that I wrote at the request of the Chicago Daily News 1 year ago this week entitled "CIA Probe Needs Goals" be inserted in the record at this point. I think the report that we will receive from the Select Committee on Intelligence will have succeeded in fulfilling the goals that I had hoped that it would have as outlined a year ago in the article.

Chairman RIBICOFF. Without objection.
[The material referred to follows:]

[From the Chicago Daily News, Jan. 18-19, 1975]

CIA PROBE NEEDS GOALS: PERCY

In the justifiable rush to investigate the transgressions of the Central Intelligence Agency, all of us involved might well pause long enough to ask what we want the end result to be.

In an ideal world, we would have no need for intelligence operations. But the world is not ideal. The superpowers possess the capability to ravage the

Earth. Oil-producing nations, wielding their new economic power, could bring down the industrialized world. Other nations are capable of actions that could trigger our security commitments and draw us into war.

In such an environment, every nation needs the most accurate knowledge it can get of the capabilities and intentions of other nations. For one nation to eliminate its intelligence operations would be as naive and irresponsible as to eliminate its armed forces.

So, as we ponder the fate of the CIA, we had better not apply the twisted philosophy of that American officer in Vietnam who justified the destruction of a contested town by saying, "We must destroy it to save it."

Nor can we accept a return to doing business as usual. The charges are too serious, the early evidence too compelling, the erosion of public confidence already too great. The need to uncover the details of what was actually done, on what scale, for what motives and at whose direction is absolutely clear. If illegal actions took place, they must be prosecuted.

But our investigations should go much farther than the narrow question of whether the CIA has violated its charter by engaging in domestic operations. They should encompass the entire American intelligence apparatus, including such gray giants as the Defense Intelligence Agency, the National Security Agency, the Federal Bureau of Investigation and the intelligence arms of the departments of Justice and State.

Congress should seek up-to-date answers to two fundamental questions: What are the limits to intelligence operations that properly can be mounted by a democratic society? How can these operations be most efficiently organized and effectively supervised?

I suspect that ultimately the National Security Act of 1947 will be revised. Such a legislative effort could establish these working goals:

To write a new over-all definition of the legitimate functions of the intelligence agencies.

To redefine the jurisdiction of each agency so that it does only what it is chartered to do.

To create tighter oversight procedures from both Congress and the White House.

To limit, rather than constantly expand, our intelligence activities. We should do less, do only what is essential, and do it better.

To separate overt information-gathering elements from the agency conducting clandestine operations abroad. The result would be a leaner, less distracted clandestine service, and one more susceptible to careful oversight.

Another proposal worth considering is to change the name of the CIA. Admittedly, that suggestion is cosmetic, and cosmetics are not enough. But given the rising suspicion with which the agency is regarded at home, not to mention the sheer paranoia that it evokes abroad, it probably is time to lay the old initials to rest.

We might consider rechristening the CIA as the Agency for Foreign Intelligence. The name would be a visible reminder that the agency's mandate is limited to plowing foreign, not domestic fields.

And the change itself, backed up by substantive reform, would be evidence that the United States intends to take a fresh approach to its intelligence responsibilities.

Chairman RUBINOFF. Senator Allen?

Senator ALLEN. Thank you, Mr. Chairman.

OPENING STATEMENT OF SENATOR ALLEN

These hearings are important. They deal with proposals relating to the importance and effectiveness of legislative oversight of our Federal intelligence agencies.

I would take it that the fact that we are holding these hearings rather than hearings to abolish outright our foreign and domestic intelligence activities is recognition by the committee and by the sponsors of the bills of both the legitimacy and the necessity of these functions for our country and our form of Government.

Rightly or wrongly, sufficient questions have been identified in thoughtful reports and in what I believe are unthoughtful reports and in leaks out of the various investigations this past year to make it clear that the principal point of this hearing is accountability.

I believe the challenge to this committee is to examine what accountability involves and whether it can be accomplished in a manner which facilitates rather than stifles the legitimate activities of our intelligence agencies.

In examining this question, we must face the central and overriding requisite of intelligence. It is secrecy.

Without secrecy, certain legitimate intelligence activities simply will not succeed. With it, suspicion arises in many minds that it aids and abets the overstepping of bounds of legitimate intelligence activities.

Therefore, as we examine the various proposals to change some 28 years of oversight practice in the Congress and as we evaluate the oversight job that has been done up to now, two considerations are controlling.

First, do the proposals or the existing conditions contribute constructively and sufficiently to the task of assuring, as much as any congressional committee in our form of government can assure, that activities do not exceed laws and charters.

Second, that we not operate from a presumption that everything secret is illegitimate or evil, and thus construct impediments undermining the probability of success of those secret intelligence activities which are both legitimate and vital to our national interest.

Normally, the responsibilities of Congress in the area of legislative oversight involve appropriations, performance, and legislation. Congress has the duty to assure that moneys appropriated are used effectively and efficiently and not squandered. Congress also has the duty to assure compliance with the letter and spirit of statutes and the responsibility to pass new laws and amendments as needed.

With respect to intelligence agencies, I think an argument can be made that oversight committees must take on to themselves a greater responsibility than most standing committees. This is clearly the case if for practical reasons of security the sensitive information available to the oversight committees is not made available throughout the entire Congress.

In this fashion, the oversight committees act as surrogates and I would support the concept of greater involvement in the workings of intelligence agencies than is normally the case with other Federal agencies in order to achieve the accountability that is the basis for our hearings.

However, I do not think that the relationship between the committees and the intelligence agencies should be so adjusted from the norm as to inject the committees fully into the decisionmaking process in the executive branch. This would strain our concept of separation of powers.

Also, I do not believe that congressional committees as constituted should or could effectively serve a Federal agency as a board of directors serves a private corporation. Thus, the oversight committees should not take over and become, for all intents and purposes, the agencies themselves.

Whatever the degree of relationship and the resulting freer flow of sensitive information from the executive to these committees, there must be a compensating adjustment in the rules of the Congress itself to stop the dangerous and irresponsible proliferation and leakage of sensitive information within the Congress. In this respect, accountability is a two-way street.

I think that is one of the most important issues that we are going to have to face in these committee hearings, how these leaks can be stopped, how we can stop this wrongful and improper dissemination of information from the committees and from other sources.

I find it inconceivable that we have laws on the books which penalize the simple willful disclosure of income tax, commodity, or census information but none which would penalize a similar disclosure of the identity of a secret agent abroad.

The tragic death of Mr. Richard Welch has brought home to all Americans the danger of exposure of CIA operatives. For months, we have been hearing warnings that disclosures were harming CIA effectiveness. These concerns should have tempered those responsible for the unprecedented flood of allegations against our intelligence agencies—allegations which in the free world are witnessed with disbelief and in the Communist world with glee.

I hope that we do not witness other deaths, other grieved families, or the failure of other brilliant technological plans before Congress acts to protect intelligence officers from international terrorists and legitimate activities from defeat through disclosure.

In today's world, thousands of nuclear missiles can destroy this nation and are only 20 minutes away. A wise and judicious use of our national resources for defense, peace, and negotiations depends in large measure on current and accurate information from our intelligence agencies.

What we need to do is assure ourselves that conscientious and responsible members oversee the intelligence agencies. These members must pursue the interests of a strong intelligence capability that performs consistently with our national policy and does not exceed the scope of its authority. To accomplish these objectives, we must assure that the laws and charters governing the activities of the agencies involved are consistent with these objectives.

We must also rectify present procedures and laws which unduly spread sensitive operational intelligence information throughout Congress and every type of media, and reject proposals, such as an annual authorization requirement, which would make it less likely that classified information can be kept secret.

What we must stop doing is tearing down the finest intelligence service which exists in the world and which we desperately need, today, and for the future.

The fundamental principle that ours is a government of laws, not men, is no mere vapid proverb. Congress' own honor is at stake in the issue before us today. And so is an essential part of our national security.

Thank you, Mr. Chairman.

Chairman RUBINOFF. Senator Brock?

Senator BROCK. Mr. Chairman, with your permission, I will submit my statement for the record and summarize.

Chairman RIBICOFF. Without objection.

OPENING STATEMENT OF SENATOR BROCK

Senator BROCK. This relates to the scope of the hearings themselves, which I assume will be slanted toward the scope of the committee, should it include just CIA activities, all intelligence activities, covert and so forth. But I hope in that particular discussion the committee will undertake a more fundamental responsibility, that is, to evaluate what it is we are trying to do in the long term, whether the Congress itself as presently structured is capable of engaging in proper oversight, whether that requires a more fundamental evaluation of the Congress and its current committee structure.

Second, to keep very much in mind the fact that with access goes responsibility, I think it is very easy to legislate ourselves knowledge in these areas, but we must be prepared to accept the responsibility that goes with such knowledge.

I have introduced legislation in this area, but I have no particular pride of authorship except to say that the Congress has a remarkable opportunity before it to serve this Nation well. It also has an awesome task in assuring that the process that we create does, in fact, serve the interests of the Nation, protect our national security, in a fashion to afford our children an opportunity to live in a world of peace.

I think that is the reference that the Senator from Alabama was making in regard to what I think are some unfortunate leaks that have come from both bodies and I hope that will be very much on our minds while we undertake this particular task.

Mr. Chairman, I would like to commend you for starting these hearings on the formation of a new Intelligence Oversight Committee. I think that we have almost universal agreement that some kind of new oversight committee is indeed needed in Congress for us to properly exercise our proper constitutional role.

I anticipate that the thrust of the hearings and the testimony of the witnesses will be slanted toward the scope of a new committee—should it include just the CIA activities, all intelligence activities, covert procedures, et cetera? This is a very important question and one that I am eager to hear from the witnesses.

However, while scope is important, the events of late have shown that there is an equally important part of this question of congressional oversight and that has to do with congressional responsibility. It is very easy for us to legislate ourselves the knowledge, but we must also be prepared to accept the responsibility.

This is what I am concerned with today and I am introducing a bill that will give the new committee the proper safeguards needed to go along with knowledge it will gain.

Briefly, these safeguards are the following: This shall be a non-partisan committee consisting of the majority and minority leaders, plus the chairman and ranking members of appropriations committee, armed services, foreign relations, and Government operations committees. This indirectly solves the problem of the executive branch having to inform too many committees.

My bill directs that if any member breaks his trust, he will be suspended when charges are brought by at least one member from each

party. The case will automatically be referred to the Senate standards committee and disciplinary action shall not exclude expulsion from the Senate itself.

For release of information, I have the following safeguards: (1) any report, press release, et cetera, released to the public must be approved by at least a three-fifths majority of the committee with at least two from each party; (2) for material released over the objection of the administration, a four-fifth vote will be required including at least three from each party; in addition, this material must be approved by the Senate; and (3) for material received under prior notification procedures a unanimous vote of the committee will be required plus a two-thirds vote of the Senate.

Staff safeguards:

- (1) None shall be hired without the approval of both the chairman and the vice chairman;
- (2) All staffers must have a background investigation;
- (3) Clearances will only be granted with recommendation of the staff director and approval by both the chairman and vice chairman;
- (4) All staffers shall sign a pledge never to divulge material;
- (5) There shall be immediate dismissal for leaks or other indiscretions any time a charge is brought by one member or the staff director;
- (6) Violations of the pledge not to reveal information or for leaking will be punishable by a sentence of up to 20 years and/or a \$100,000 fine.

While my bill does concentrate on safeguards, I am, naturally, concerned about more substantive questions. Therefore, I am directing the new committee to submit two reports. One shall be on the question and advisability of an overall "intelligence budget" and the other is a study on whether the whole American intelligence community should be reorganized.

Finally, I have long felt that at least once a year, the Directors of the Central Intelligence Agency, Defense Intelligence Agency and the Federal Bureau of Investigation should be allowed to tell their story to the American people. Therefore, my bill directs that once a year they shall submit a public report on communist activities within their respective areas.

Mr. Chairman, I am not wedded to every period and dotted "I" of my bill, and I may well change my mind on sections after hearing the distinguished witnesses. But, I will not change my mind on the fact that we do need some safeguards and I feel that my bill will be useful as a touchstone in that respect.

Chairman RIBICOFF. Thank you, Senator Brock.
Senator Nunn?

OPENING STATEMENT OF SENATOR NUNN

Senator NUNN. I do not have a prepared statement.

Very briefly, I think Senator Allen has pointed out many of the problems I see and many of the opportunities we have in these hearings and in the markup session on this particular legislation.

We have to play a vital role in Congress, as I see it. We also have to learn to keep secrets.

I know over and over again since I have been here I have heard about how well Congress has kept secrets during the last 30 years. But I would say in the last 3 years that record leaves a lot to be desired.

I think that we can all point fingers at each other. Here certainly has been an almost pervasive distrust between the executive branch and the legislative branch in the last 2 or 3 years. We can talk a lot about whether the Congress or the executive branch is at fault in various aspects of our foreign policy.

I think any impartial observer, including the American people, would have to conclude in the last 18 months that the combination of what the Congress and the executive branch have done in the field of intelligence and in the field of foreign policy has not been a good combination. We can have two superb players on one team, while the team itself can be a disaster. I think that we have to provide checks and balances here.

Certainly Congress has a vital role to play. We also, as a committee, have got to come up with a team approach. It is not enough to try to point the blame for what is going wrong in foreign policy at the two branches of government. The final result is whether or not our foreign policy in America is working for the benefit of our Nation. I think that we are in serious difficulties today because of the many events that have happened in the last 18 months.

Chairman RUBIOFF. Thank you, Senator Nunn.

Senator Weicker?

Senator WEICKER. Thank you, Mr. Chairman.

OPENING STATEMENT OF SENATOR WEICKER

The quick response to either threat or neglect is a great national trait. Nobody makes up lost ground faster than America. In so doing, we sometimes go off the rocker with as much determination as we sat in it.

When it comes to intelligence gathering and law enforcement, it is time to stop the pendulum in midswing.

De facto immunity from accountability granted the FBI, CIA, and so forth, by Presidents, Congressmen and the public is unconstitutional.

Smearing everything CIA or FBI is nuts.

Congressional and Presidential failure to reform is hypocritical.

I would point out, Mr. Chairman, that the year is 1976. The year was 1973 when the Congress and the President and the public knew that these various agencies had overstepped their bounds. We have had 3 years of sound and fury, and no action.

The United States needs effective constitutional intelligence and law enforcement. It is my suggestion that we clean up their act and get on with it.

Chairman RUBIOFF. Senator Glenn?

Senator GLENN. I have a statement that repeats some of the concerns already expressed by other members of the committee today. I would like to submit it for the record.

Chairman RUBIOFF. Without objection.

OPENING STATEMENT OF SENATOR GLENN

Senator GLENN. Mr. Chairman, My statement will be brief. I concur with the other members of the committee in the importance of our effort to provide effective oversight of intelligence operations. The issues we will be considering raise some basic but difficult questions of which I hope we will be mindful during our deliberations and to which I hope we might help find answers.

Public concern and debate in recent months relating to the U.S. intelligence establishment has centered around such basic questions as: what should we be doing or should we not be doing; who should be doing it; and to whom should they be responsible?

An intelligence capability is necessary for the security of our Nation and I would want the capability to be the best and most efficient possible, but at the same time such capability must be consonant with the constitutional principles of our Government. The role of an intelligence establishment and secrecy in a democratic society is not an easy question to answer but nevertheless one of which we must be mindful. In giving the powers necessary to have an effective intelligence capability, we in the legislative branch must remember that such power must have a check, which is why the oversight function of Congress is a great responsibility.

The committee has the task of determining the most effective methods of congressional oversight of intelligence operations. We are fortunate to have the guidance of such a distinguished panel of witnesses in considering the legislative proposals before us. We should give close attention to the recommendations of the Select Committee on Intelligence Activities, chaired by Senator Church, which has investigated problems and abuses connected with intelligence activities. It is now the responsibility of the Committee on Government Operations to go forth with the recommendations and to try to solve problems brought to our attention by the select committee.

I would only like to add to that statement that our purpose today must be to strike the balance that is necessary to maintain a strong intelligence capability within our constitutional Government.

We need a strong intelligence gathering operation. Along with many other people in this room, I am sitting here today alive because of some of the intelligence gathering apparatus we have had in the past in this country. In the future, that may well apply, not just to some of those who represented their country in various efforts in the past, but may apply to all of our Nation. It may apply to hundreds of millions of people around the world. It is that important.

In fact, the survival of our whole Nation may well revolve around what we do with regard to setting up the intelligence apparatus of this country, or changes we make in it.

It is the balance between that necessity and the prevention of excesses of the sort that I think we would all agree are un-American and unconstitutional, that we are trying to set today.

Ours is a Government of checks and balances. We are trying to determine the proper check as a part of that checks and balances today. Congress represents the concerns of the people, and it is our responsibility to strike that balance. That really concerns me.

We do not want to destroy the intelligence apparatus. For that matter, it might be found necessary at some point even to expand it. The security and the constitutional rights of everyone in this country are our responsibility. It is the difficulties involved in striking that balance that is essential today.

Chairman RIBICOFF. Senator Mansfield, 20 years ago you tried to set up a separate committee to oversee the CIA and the Senate did not heed you for 20 years. We are finally catching up with your thinking 20 years late.

We would be honored to have your views now.

**TESTIMONY OF HON. MIKE MANSFIELD, A U.S. SENATOR FROM
THE STATE OF MONTANA**

Senator MANSFIELD. Thank you, Mr. Chairman, and members of the committee.

What the chairman just said is true. When I introduced the resolution, I believe I had 53 sponsors. When the oligarchs got through with me, we only had 28 votes to bring about the creation of a joint committee on intelligence.

I hope that lesson will be remembered, and I hope also what has gone on before will not be forgotten as we look to the future, because I agree with the chairman that it is not so much the past that counts now, because what has happened cannot be undone. It is the future which is of importance.

These hearings coincide with the concluding days of the Select Committee's investigation into illegal, improper, or unethical activities conducted by the Nation's intelligence community.

May I say that I am very proud of the way the Senate Select Committee has conducted its hearings. They were given a most difficult job. They were subject to all kinds of attack, innuendos, and allegations. There have been no leaks out of the Senate Intelligence Committee, and I want the record to show that, because I think that we ought to give support and commendation to our colleagues who undertook this arduous task and did so well under the most difficult of circumstances.

I have been much impressed with the unanimity of the Church-Tower committee, with the conduct of the membership as a whole, and I hope that such unanimity will continue and that this committee and our colleagues in the Senate will give full and due consideration to the recommendations which will be made from firsthand contact by this committee in the immediate future.

Mr. Chairman and gentlemen, as we learn about and begin to understand some of these revelations regarding the way intelligence operations are conducted, it becomes apparent that what the American people knew before were but dim shadows of our intelligence establishment—shadows which were cast only from time to time. For most of us, the community itself remains as it had before, cloaked in mystery.

Heretofore, that was so because Congress largely chose to ignore it. It will continue a mystery, however, unless and until Congress chooses to change its policy and to exert some degree of scrutiny and vigilance, to perform some measure of oversight, to extract a commitment of ongoing accountability. The excesses of our intelligence community

now so familiar to us all are a direct result of congressional neglect and inattention.

What is to be remembered in the context of these hearings and any forthcoming recommendations, however, is the essential necessity for a strong, vital, and highly competent intelligence gathering facility within the Nation. What is not to be forgotten for a moment is the outstanding work to date performed by the CIA, the NSA, the FBI, and all the rest of the elements that make up the intelligence community.

That is not to say that there is no compelling need for vigilance and accountability. Supervision and responsiveness are the only ways we might avoid as much as possible the recurrence of past strains against our constitutional system.

The initial question then is whether there is to be any oversight facility concerning the intelligence community within the Senate.

That question for me personally does not need extensive comment. Even without recent investigations it was clear that congressional awareness of intelligence activities had been inadequate.

Either unable, unwilling, ill-equipped, or otherwise, the Senate certainly has not performed this essential function. It could be said that we as elected representatives under this form of government simply have not performed as we should have performed. We have been inexcusably lax.

Now is not the time, nor is this the place to assess blame, to cite responsibility, or to lay bare these deficiencies of the past. Nor indeed was it the Senate alone that failed. But the failure is there nonetheless, cumulatively but unmistakably.

It is there in terms of the abuse, in terms of the waste and inefficiency, in terms of outright assaults against freedom and individual liberty.

Intelligence is necessary. It is necessary, essential, right, and appropriate. But neither is that an issue before this committee.

In the past in America the intelligence function has been a cornerstone to national survival, manned, in my judgment, by the most competent, effective, and dedicated individuals ever assembled.

In the context of the world as it is and as it will no doubt continue, intelligence gathering will remain a vital support to the Nation. No one seriously questions that proposition.

What you are considering, Mr. Chairman and members of this committee, is oversight, or awareness, or watchfulness, all reflecting the appropriate role of the legislative body within the framework of American democracy.

To be sure, there will be cries of meddling, or wrongful intrusion, of so-called politics.

Already they are heard in the corridors outside and even in the press, and they have been made against the committee that has done an outstanding job in pursuing this inquiry for the last several months.

Be steadfast, I suggest, Mr. Chairman and members of this committee. Be steadfast in your efforts to recommend to the Senate a facility that will provide regular, comprehensive, and systematic oversight regarding the Nation's intelligence function.

Those cries were heard before and they prevailed. They served to obstruct the role of this institution only to misdirect it or mislead it at times in pursuit of ill-advised and misguided policies both at home and abroad.

As you know, my own efforts to create a more consistent and comprehensive approach to intelligence oversight by the Senate goes back more than a decade.

The reasons for my past concern, may I say, have been amply justified recently in terms of the task undertaken this past year by the Church-Tower committee.

Those reasons are diverse—as diverse as intelligence operations themselves; operations which are scattered among and between a dozen or more agencies, bureaus, and departments.

CIA, as this committee knows, undertakes only a fragment of the total intelligence activities of the U.S. Government.

There are NSA, DIA, the Bureau of Intelligence within the State Department, Treasury's Office of National Security, ERDA, the Air Force intelligence unit, G-2, in the Army, the Marine Corps, naval intelligence and then the dozen or so agencies that cover domestic intelligence including FBI, DEA, IRS, and so forth.

Within this intelligence thicket have arisen unneeded overlaps and duplication of effort, goals, and achievements. To reshuffle and restructure them will take more than the immediate task this committee assumes.

They do explain a small aspect of the problem, however. The history of effective coordination is as uneven as the history of the growth of the intelligence community itself and the changing cast of officials within the differing lines of authority charged with administering it.

Then too, there is the question of Federal agencies directing actions against individual U.S. citizens in clear violation of the spirit if not the letter of the Constitution. This is only another aspect of the problem. But it should also be open to some form of Senate scrutiny.

And in connection with overlap and duplication, what about the effective use of intelligence reports? Within the various components of the intelligence community there often have existed differing conclusions about a given set of facts or events.

In helping to formulate national policy should we in the Senate not have the benefit of the various reactions within the intelligence community to a problem facing the Nation? After all, we are charged with the welfare of this nation and we have to answer to our people, unlike so many others in this Government who do not.

Admittedly, global conflict at times seems to pounce on us as a Nation but the lesson of Vietnam stands also as a reminder of an information and assessment hiatus that in my judgment assisted the misdirection, misapplication, and imprudent commitment of U.S. resources and manpower.

By the same token, let us remember that Angola stands immediately before us with the Middle East as always on the horizon.

Delicate indeed does this become when we speak of covert actions employed to influence events. It is not that they should be abandoned.

It is rather that their purpose be measured with more care than previously demanded against the vital interests of the United States.

It means too that effective awareness of them be extended to this institution in advance of their execution.

Beyond these issues there is the question of fitting together the Nation's intelligence components from the standpoint of external threats vis-a-vis actions occurring within our national boundaries which tend to serve them or to aid or assist them.

Such an oversight mandate must, therefore, include the capacity to accommodate an integrated perception of national intelligence—not foreign intelligence, not domestic intelligence—but national intelligence.

Certainly, there are additional issues that would justify an intelligence oversight function or mandate by the Senate. But, as I perceive the task of your committee, Mr. Chairman, with the rationale already there, the endeavor now is to design a Senate facility capable of doing the job while at the same time safeguarding the most vital secrets of the Nation. By that I mean matters the exposure of which would threaten our very survival.

How do I see such a facility? Its shape? Its functions? Its form? In part I have explained it already, but I would like to add some further comments.

First of all, should it be a Senate facility. Yes. I have indicated that.

What the House does is up to the House. It has undertaken its own special intelligence investigation this past year and may arrive at differing conclusions on where to go from here in the context of its own constitutional responsibility.

But, in my mind, it is clear from the Constitution, from the laws and the history of this Nation that the Senate is assigned a unique and special role in foreign affairs.

To more effectively perform that role in behalf of the American people, the Senate must create every agency and facility needed to do the job. Intelligence oversight is needed. To do that job, a facility must be created.

As a body, the full Senate cannot do it and to date no existing committees have done it. As a result, in my own experience over the years, I along with the Senate have suffered a significant deficiency both as to the awareness of the intelligence apparatus and operation and the information gathered and assessed therein.

What about the charter? I think it should be sufficiently broad to encompass all major intelligence organizations. Directly under it, therefore, should at least come the activities of CIA, NSA, DSA, certain endeavors of DOD and the counterintelligence undertakings of the FBI.

While it thus should be broad enough to invite the most generous scrutiny of the intelligence community in the Senate's behalf, it need not limit or preclude the normal delegated jurisdictional bases of other standing committees.

In some cases, in fact, there is a great deal to be said for a little competition. But no committee, no agency of the Senate has exercised complete vigilance over such obvious questions, for example, as intelligence coordination.

No committee heretofore has analyzed on a continuing basis the ongoing activities of each of the intelligence components, related their

activities to each other or fitted them together into an integrated whole. Overlapping duplication, swollen and inefficient budgets and so forth may or may not be in the interests of this Nation. Only by vigilance and understanding, however, can such judgments be made.

And what about the issue of unconstitutional operations against citizens of the United States by an intelligence apparatus?

For these, there have existed few, if any, remedies in the past. What remedies there have been were inadequate at best. Oversight coupled with a mechanism that assures accountability would go far in my judgment to preserve notions of individual liberty that we cherish so deeply, or at least we say we do.

Of particular sensitivity is the question of budget analysis with respect to intelligence operations. But oversight per se would seem to dictate that such a function be included within any mandate established.

In the past we have been put off in this area with urgings that there have been no hearings, no investigations and so forth.

The investigations have occurred, hearings have been held and it is time I think that we carve out a rational way to perform a simple authorizing function on an annual basis.

Such a function is essential to the question of accountability. Perhaps a line-item approach would not be in order granting the nature of many of the activities involved but aggregate sums certainly reveal little, if any, of our intelligence story that is not already known to the world.

As I recall, atomic and nuclear expenditures are handled in similar fashion.

Beyond an annual authorization, however, such a committee must be kept informed on a continuing basis of all major activities and plans.

Overall, it must be equipped with appropriate tools to assure such responsiveness. But while subpoenas, compliance and contempt procedures and the like should be made available, the emphasis in this area must be on cooperation with the Executive and that too should be spelled out in any charter along with appropriate measures to require that cooperation be a two-way street.

It seems to me that a primary concern here is to assure that national policy formulated largely by and within the legislative branch is not to be overturned, undercut or frustrated in its execution and implementation.

The initial burden of coming forward by necessity would fall on the agency or agencies involved and in turn it would be the responsibility of the committee as the Senate's agent to keep the Senate advised in an appropriate manner keeping in mind the relative importance and sensitivity of whatever issue happens to be at stake.

Standards and safeguards regarding disclosure may be in order but it has always been my conviction that Senators are equal, every single one of them, that there are no super Senators, that no Member elected to serve in this institution exceeds any other in terms of patriotism, of loyalty or of dedication to the letter and spirit of the Constitution and the laws of the United States.

It is, in fact, for this reason that I believe that the membership on the Intelligence Committee should be rotated.

A limitation of 6 or 8 years of consecutive service on the committee would guarantee the vigilant inquiry that a fresh mind brings to any problem.

It would avoid the possible danger of establishing the client relationship that could otherwise and has so easily occurred. Also, it would provide in time a significant foundation upon which the Senate as a whole might confidently adjudge the recommendations of its agent, the committee.

Otherwise, I would apply the same standards as are imposed upon the other standing committees in terms of composition, selection, membership, staffing, the election of chairman, and whatnot save only that the sensitive nature of its tasks requires that additional precautions be taken just as they are by the Joint Committee on Atomic Energy and just as they have been this past year by the Select Intelligence Committee of the Senate.

One final comment. Mr. Chairman and members of the committee. While these views reflect and expand upon my public critique of the work and recommendations of the Commission on the Organization of the Government, the so-called Murphy Commission, with respect to the establishment of an intelligence committee, I would caution you and this committee concerning an aspect of this issue insofar as the involvement of Congress and the Senate is concerned.

I served on that Commission and my views on its performance are rather well known. What I wish to say is that there is some risk in creating any committee in this area.

What I would not want to see happen; indeed, what would be counterproductive would be a committee cloaked only with apparent importance, manned by some elite few who gained admission outside the normal selection process, centralized and aloof, and in the end so impotent that it would itself become a creature if not an active conspirator within the community over which it must exert scrutiny.

Make it independent. Give it the tools and power to protect that independence.

Above all, make certain that it responds to the Senate and to the Senate alone.

Thank you, Mr. Chairman and members of the committee for the opportunity to appear.

Chairman RIBICOFF. Thank you for your most valuable statement, Senator Mansfield.

Senator Mansfield, do you think that through a new committee it is possible to reconcile the principles of democracy and openness with the operation of a secret intelligence program?

Senator MANSFIELD. Yes; although I believe it would be curbed to a degree by the very nature of the responsibility.

Chairman RIBICOFF. With any new committee that is established, the prime responsibility really in choosing the membership upon the part of the majority will be yours. On what basis do you think the membership of the new committee should be selected?

Senator MANSFIELD. Certainly not on seniority alone, and I gave a good deal of thought to the selection of the Democratic members of the Church-Tower committee. For my part in that selection process, what I tried to do was bring about a mix based on philosophy, geogra-

phy, and the like, among the members of that committee, and I think that they have lived up fully to all the expectations that I had anticipated of them, as did the members of the Watergate Committee, who were likewise appointed after due consideration and thorough thought, so that I would like to see, as I mentioned, a committee on which members are rotated, where a member could serve no more than 6 or 8 years. It could just as easily be 4 to 6. I want to see younger members placed on these committees; I do not want to see them hibernating in the background. I want their fresh thoughts to be put to use so that we can have the benefit of their thinking. They are closer to the people than those of us who have been here for more years. They are more aware of the needs of the people, and they have contributions to make and they are just as competent, just as loyal, just as patriotic, just as dedicated as those of us who have served in this body for a number of years.

So I would like to get a mix of all sections of the Senate. I would like to do away with the doctrine of seniority as far as this committee is concerned, really, as far as all committees are concerned, although seniority is not as bad a procedure as some people think. But to put it bluntly, I want to reiterate that I believe every Senator is equal, every Senator, regardless of where he comes from, how he votes, what his philosophy is, and I would operate on that basis to the end that a mix would be made out of the whole Senate in the creation of a committee as far as the majority party would be concerned. I think these matters could be handled through the usual channel with initial recommendations made by the Parties Steering Committees.

Chairman RIBICOFF. Senator Mansfield, in your position as majority leader, you are aware of committee jealousies and prerogatives. What oversight function should be shared by a new oversight committee and the committees now exercising oversight?

Which functions should be given exclusively to the new committee? How are we going to reconcile those jurisdictional difficulties?

Senator MANSFIELD. That is something that this committee which I am addressing now will have to work out along with the full Senate. Under the present charter, of course, the Armed Services Committee in the Senate has primary jurisdiction. Under the present procedure, I believe under the law, the CIA, for example—and let me digress a moment. I hate to set the CIA by itself, because it is not the ogre, as it has been painted; it is only a part of the intelligence community—frankly, it has been right more often than it has been given credit for, and I refer back to certain findings and statements made during the course of the tragic war in Southeast Asia.

But at the present time, under the law, to reiterate, it reports to six committees: Appropriations, which has a small subcommittee; Armed Services, which has a small subcommittee; and Foreign Relations, which committee has delegated to the chairman and the ranking minority Member the right to act for the full committee in its relations with CIA specifically.

I think that a reasonable *modus operandi* could be worked out insofar as the Armed Services Committee is concerned because under its original charter it has primary jurisdiction.

I think that there would have to be a subcommittee at least in the Appropriations Committee because of the matter of funding. I do not

think that it would be necessary for the Foreign Relations Committee to be a third committee to be reported to if a standing committee is created, because the membership of that committee would come from other committees, and I daresay that there would possibly be one or two on it from the Foreign Relations Committee—just guessing out loud.

But the techniques, the details, are going to be up to the committee now conducting these hearings after listening to the witnesses to exercise its own best judgment as to what it would recommend in the way of reshaping jurisdictions.

Chairman RIBICOFF. The committee will run on the 10 minute questioning rule during the Senate hearings.

One final question. You state, Senator Mansfield, in your prepared statement, that new committees should have budget authority over intelligence agencies. Which agencies do you have in mind? Do you believe such authority is essential if the new committee oversight efforts are to really be effective?

Senator MANSFIELD. I think so.

As I have indicated, it is not necessarily by line item but certainly overall it should have a picture of what is developing and an understanding of how these funds will be used by the major intelligence agencies and a recognition that some matters cannot just be made public.

Chairman RIBICOFF. Thank you very much.

Senator PERCY?

Senator PERCY. Mr. Chairman, a procedural question.

I thought the Senators who are testifying were operating as a panel and that each Senator would give his statement at the beginning. I wonder if we could advise our colleagues when they should be prepared to give their testimony so that they might perform other functions?

Chairman RIBICOFF. The problem that we have is that the majority leader, who was supposed to testify last, and was taken before Senators Church and Tower because of Senator Mansfield's other duties. Senators Church and Tower kindly agreed to have Senator Mansfield give his testimony first so that he could return to his other duties.

Senator PERCY. I wonder if we could all limit ourselves to 5 minutes now? Would that be acceptable, so that we can get to our other witnesses?

Chairman RIBICOFF. Without objection, we will limit it to 5 minutes.

Senator PERCY. Senator Mansfield, I would like to say first on my time that I think your statement is clairvoyant. It is a challenging statement and a fine start for these hearings.

I originally felt a joint committee would be best, of the House and the Senate, feeling that we should try to conserve the energy and time of all the agencies to be overseen.

I since have changed my mind.

Senator Mansfield, you are for a separate committee of the Senate. Could you amplify why you think that should be done, to reinforce my own intuition that it should be that way?

Senator MANSFIELD. I would be glad to.

I originally thought that a joint committee would be the best way to operate and the model would have been the Joint Committee on

Atomic Energy. However, when the Senate Select Committee on Intelligence was created, I did establish contact with the House to see if their committee would not work with ours so that we could have a joint committee. The answer was in the negative, so I have come out for a Senate committee.

If the House wants to, it of course can become a part of a joint committee, but the decision would have to be theirs and I do not think that we ought to lolligag too long along the way.

Senator PERCY. Senator Mansfield, do you feel that the Senate committee should have the right of veto over an intelligence operation to be carried out by the CIA or any other intelligence agency? Should we become part and parcel of any action undertaken by them or should we only look at it after it has been accomplished?

Senator MANSFIELD. I do not like to use the word "veto," but I think a Senate committee should be in on the takeoff, to use an oldtime war phrase, that it should work in cooperation with not only the agency concerned, but with the administration. If it differs, it should make its views known ahead of time to the agency and to the administration so that if, despite the judgment of the Senate committee representing the whole Senate an operation of that nature went ahead, it would at least have made its position clear, and I think there should be a procedure to report to the Senate within a time period—say 30 days.

Senator PERCY. Finally, do you feel that covert operations should be carried on by the U.S. Government, and, if so, should they be separated from intelligence gathering in the Central Intelligence Agency however it is restructured?

Senator MANSFIELD. To be carried on, they should be carried on by the CIA.

I do think that they have been carried out to an extreme. They ought to be limited. I do not think they should fall into patterns that are just followed automatically.

For example, the \$6 million that supposedly is being sent to anti-Communist parties in Italy—and I use the word "automatically" deliberately, because I recall the beginning of these payments in 1948 and I am assuming that they have been used in all the intervening years.

If so, it is a covert procedure that has outlived its usefulness and at this time, it should be abolished, because it is counterproductive.

Senator PERCY. Thank you, Mr. Chairman.

Chairman RIBICOFF. Thank you, Senator Percy.

Senator Allen?

Senator ALLEN. Thank you, Mr. Chairman.

Senator Mansfield, I certainly commend you on your statement and I commend you on your expertise in this area. I know of the strong convictions that you entertain with respect to our foreign policy and our various foreign aid programs.

I appreciate the counsel that you have given the committee today.

Carrying Senator Percy's line of questioning one step further, would it be the function of the Oversight Committee to be established in its oversight responsibility if it saw the need of a covert activity in a foreign country to direct the intelligence agency—in this case, the CIA—to conduct that operation, or would it merely review and pass upon the suggested activities of the agency?

In other words, would the committee initiate activity, or have that power?

Senator MANSFIELD. No, I do not think it should have that power, because it does not have the expertise or the knowledge.

Senator ALLEN. All it would do is review from the start any activity proposed by the agency?

Senator MANSFIELD. That is correct.

The agency, contrary to its present practice, should keep the committee fully informed rather than operate on a haphazard schedule as it does at the present time, giving to the committees what they think the committees want to hear.

I am referring to the three subcommittees in the Senate, and I cannot fault the CIA for that, but I do fault the members of those committees—and I happen to have served on those committees—because we have not raised the pertinent questions that we should have, and we have not tried to delve into the matter of intelligence gathering, coordination, or whatnot.

So I want to say, while the CIA—and undoubtedly other intelligence agencies—have many faults, that the Congress has a good many faults as well.

Senator ALLEN. Now, on the matter of revolving membership on any new Oversight Committee because of the fact that they might become more or less inbred on the committee, what about the staff which directs the operations of many of our committees in practice? Would you rotate them as well?

Senator MANSFIELD. Oh, yes. I had not thought of that question in any great detail, but therein could lie, perhaps, the danger to a committee, because in all too many senatorial committees, the staff becomes all too dominant and they are the ones that lay down policy, and in some instances the Senators are the ones who follow what they lay down, so that they should be treated no better; they should not be given permanent tenure.

That raises the most serious question. If you operate on that basis and they cannot look forward to permanent tenure, how will they be able to protect the national interests once they leave the committee?

Senator ALLEN. That would be something to consider and work out.

Now, on the matter of separate oversight committees in the House and the Senate, if the House chooses to go that way, suppose the Senate committee vetoes, you might say, an activity, and the House said go ahead. Would you not then run into conflict with the House?

Senator MANSFIELD. That is correct. All a Senate committee can do is speak for the Senate and not for the Congress.

Senator ALLEN. Could they veto it? Would each one have the power of veto as we have on some of these changes of rules and so forth?

Senator MANSFIELD. Senator, that is why this committee is holding hearings at this time.

Senator ALLEN. Thank you.

One further question. Will this be a major committee under the Senate rules?

Senator MANSFIELD. Certainly.

Senator ALLEN. Which would forbid any Senator serving on that committee from serving on another major committee?

Senator MANSFIELD. It would be a major committee and we would have to, the joint leadership through their respective steering committees, would have to work out a schedule by means of which that situation could be met, faced up to, and overcome.

Senator ALLEN. As Senator Church said, if he went on this committee, in all likelihood he would have to come off Foreign Relations; is that correct?

Senator MANSFIELD. That I could not say.

Senator ALLEN. This would be a major committee.

Senator MANSFIELD. I do not think he can come off Foreign Relations because it will not be so long before he will be the chairman of that committee.

Senator ALLEN. Speaking as a colleague of the distinguished chairman of the committee, Senator Sparkman, I hope it will be many years.

Senator MANSFIELD. I hope it will be many years too. What I am pointing out is that he is second in line.

Senator ALLEN. I thank you.

Chairman RIBICOFF. Senator Brock?

Senator BROCK. Thank you, Mr. Chairman.

Senator, I particularly appreciate your statement and agree with it. I would like to ask you to draw on your experience and your capacity as majority leader to think with me out loud for a moment on the complications that will arise with a separate standing committee, to pose this question to you.

You are aware of our colleague's Senator Humphrey's efforts to create a permanent standing committee on national security. I wonder if—I know this committee does not have that particular jurisdiction, but it is going to be very difficult for us to consider this question without considering the kind of question that Senator Allen was just asking, the complications that will arise in terms of service, jurisdictional conflicts, and so forth.

I wonder if you might comment for me, at least, on the prospects or possibility of some more fundamental Senate reorganization that would allow perhaps a more focused look at intelligence as a part, not a distinct component on its own, but as a part of our total national security needs or policy?

Senator MANSFIELD. Well, I think that national security entails a good deal more than national intelligence.

Senator BROCK. I understand that.

Senator MANSFIELD. I would prefer to confine my suggestion to a committee on intelligence rather than a committee on security, because there you get into another donneybrook and perhaps a worse one in the relationship of a committee of that nature with the Committee on Armed Services, for example, perhaps the Committee on Foreign Relations, perhaps the Committee on Government Operations, which has an all-encompassing mandate as far as their responsibilities are concerned.

I could not answer that question, because I do not know what the answer would be. If it ever came to a showdown, the decision would have to be made first by the Rules Committee.

Senator BROCK. I understand that, and obviously, I agree. I think my frustration comes from our inability to get the Senate even to

study the question of Senate committees themselves and their jurisdiction. That is not the point I am trying to raise.

I am trying to look down the road at the problems that will arise with the budget question, for example, if armed services feel very strongly that the budget approved by the Intelligence Committee is inadequate because it does not adequately provide for national defense. It seems as though we have at least the possibility of really significant splintering of our effort in the Senate, not just conflict in jurisdiction, but maybe a less-than-adequate oversight itself on the part of both because of the competition between the two.

That does trouble me. I am very much bothered by it. I am not sure I personally know yet how to resolve the matter.

Senator MANSFIELD. All of the questions raised so far have been difficult, if not impossible to answer, and that is an indication of the complexity of the problem which confronts this committee and the difficulty that you are going to have in trying to find answers, but if it is a matter of budget, I can only say that I am thankful that we have a Budget Committee now that may be able to act as an arbiter or an umpire in a budget dispute between two committees if the other one is created, if it should ever arise.

Senator BROCK. Again, I appreciate your testimony very much. Thank you, Mr. Chairman.

Chairman RIBICOFF. Senator Glenn?

Senator GLENN. Thank you, Mr. Chairman.

Senator Mansfield, in your statement, I agree with you completely on the need for a national intelligence oversight, which you stress. When you mention some of the areas that might come under an oversight committee—and on page 5 of your testimony, you indicated a much broader scope than you did on page 10—when you cite the authority that the committee would have.

Was this intentional, or did you mean that we would have all intelligence oversight functions coming under this committee?

On page 5 you listed NSA, DIA, Bureau of Intelligence within the State Department, Treasury, National Security Administration, ERDA, Air Force Intelligence, G-2 in each of the services and a dozen or so agencies that cover domestic intelligence including the FBI, DEA, IRS, and so forth. Later on, in the special mandate for the committee, you narrow that down considerably.

It would seem to me that with a national intelligence approach to this, we would have to encompass almost everything. Is that your intent?

Senator MANSFIELD. That is correct.

On both pages 5 and 10 I left out a number of intelligence agencies, bureaus, and offices, I think the intent was clear that it would be all-inclusive.

For example, I did not mention, I believe the Atomic Energy Commission has an intelligence set-up. There are various others.

Senator GLENN. Would it be your opinion that this would be a manageable thing with a dozen or so different groups which an oversight committee would be required to deal with, or do you think the executive branch would have to reorganize with one major intelligence-gathering organization or a "Czar" under which all the rest of these

agencies would come in order to make it a manageable situation for the Congress?

Senator MANSFIELD. The latter.

I believe, for example, you have in the Department of Defense four, or maybe five, different intelligence operations. The Defense Intelligence Agency was brought into operation, as I recall, to take the place of the various service intelligence operations. The service operations are still there, the DIA is still there. It has increased its activity.

What you have is a hodge-podge which I think can be cut down considerably. You have to have some agency which will coordinate, assimilate, assess information. That I understand is the responsibility of the CIA. I am not at all sure that CIA exercises that function. If it does, I am not at all sure that this recommendation gives them the consideration that it should.

Senator GLENN. In the area of authorization, which you indicate you would provide for the committee, would you also propose that the Senate take the additional, although unusual, step giving appropriating authority to this committee, separate from the normal Appropriations Committee?

Senator MANSFIELD. No.

I think that is a dangerous step to take. We did that in the legislation authorizing revenue sharing, and at the same time that we passed the authorizing legislation, the Finance Committee, as the distinguished chairman of this committee will recall, was also responsible for the appropriation, and 5 years of appropriations were passed with the authorizing legislation.

There was a struggle between the Appropriations and Finance Committees. The Senate upheld the Finance Committee, but I think it is a very bad practice, even though I am a member of the Appropriations Committee and took no part in the debate. I think that the authority, the main responsibility of the Appropriations Committee, should be maintained and not transferred to the legislative committee.

Senator GLENN. What concerns me is that some of these things that will be discussed in the oversight committee will be extremely sensitive matters which might be the subject of much debate by the committee in their consideration of an authorizing bill. They might deal with covert activities, things like this.

Once we expand that same type of information into the Appropriations Committee staff and into other staffs, we proliferate the danger of this being public knowledge. That is the reason that I brought it up.

Would you care to comment on how you think that could be handled?

Senator MANSFIELD. You have a good point there, but the Appropriations Committee would be concerned primarily with funding. Where the standing committee—if it is created—would be concerned with policies and actions to be undertaken so I think there is a line of demarcation there that ought to be considered. Although you have raised a fine point, again, I will pass the buck on this to this committee, because you are the ones that will have to make the initial decisions.

Senator GLENN. It is very difficult for me to see how the Appropriations Committee can really carry out their proper function, to pass a judgment on what a proper level should be unless it is provided much

of the same information. Otherwise it would be an automatic rubber-stamp of the authorizing process of the oversight committee.

Senator MANSFIELD. They have not inquired too deeply into matters that should have been their concern at the time. They meet with the CIA and ask for the justification of their funds, so it would not bring about a change of policy as far as the Appropriations Committee is concerned, because it does not go into it that deeply at the present time.

Senator GLENN. Mr. Chairman, I believe that my time is up. I regret that it's necessary to have this 5 minute limit. I would hope that we could have Senator Mansfield's expertise again before we conclude these hearings, because he is such a key witness, with his long experience.

Chairman RUBINOFF. Thank you, Senator Glenn.

Senator Weicker?

Senator WEICKER. Thank you, Mr. Chairman.

Senator Mansfield, I think that is a superb statement. I am in 100 percent agreement with every aspect of it.

I just have two questions.

I would like to, by referring to a passage in your testimony, dispose of one of the scare tactics that is employed by those who are opposed to the type of legislation that I have introduced, that being that any such oversight would lessen national security and would diminish our capabilities.

I notice in your statement that you state what is to be remembered in the context of these hearings is that any forthcoming recommendation is the essential necessity for a strong, vital and highly competent intelligence gathering facility within the Nation.

I am sure these same people that say that we would lessen our intelligence capability were probably opposed to the Armed Services Committee when we first set it up. That national defense would be far better run if it did not have congressional supervision.

I wonder if you might not comment on this point, that, in fact, we could probably achieve better intelligence with oversight than with the way the situation now stands and to try to dispose of those who are entering the fear of the intrusion of national security.

Senator MANSFIELD. It is my feeling that we could achieve better intelligence at less cost and with less manpower.

May I say, when I first advanced the idea of a joint committee to oversee the activities of the CIA, I did so because I wanted to protect the CIA in case it was unjustly accused. This was fought by the CIA—Mr. Allen Dulles and others—because they did not want their reservation infringed on, they wanted complete independence, they wanted to do what they thought had to be done without hindrance and certainly without any consultation with a congressional committee.

They were able to win because they had the hierarchs in the Senate in their pockets, so to speak, and they were just as loathe to change as the CIA was to face up to change.

It appears to me that a committee, either single or either Senate or joint, would be beneficial, would bring about a better degree of trust between the representatives of the people, the elected representatives of the people and the appointed officials of the intelligence agencies.

I think that it could function without much in the way of leaks.

May I state, in about the same year or the year before that the Joint Atomic Energy Committee was created in 1946 or 1947 that in the almost 30 years of its existence there has been only one leak, by the late Senator Ed Johnson of Colorado, and that was very, very minor, and you have had all kinds of people on that committee. They have conducted themselves well, and they established a good relationship with the Commission itself.

The same thing could happen in relation to the CIA and other elements of the intelligence community.

Senator WEICKER. Thank you very much, Senator.

My last question is this. You indicated when you first introduced your legislation 10 years ago that it was actually nibbled to death, either by the bureaucracy or those opposed, and sort of died.

Senator Baker and I introduced ours 3 years ago. It has been nibbled to death. Nothing has happened on it.

I wonder if it is the intention of the Democratic leadership to try to push for this legislation in this session of the Congress? Is that the intention of the leadership?

I would hope it is. I would certainly join with you. I have the same fear that you obviously experienced and I experienced and I am sure everybody in the CIA and the FBI hopes this eventually will go away and blow away and we will be right back to square one.

Right now as a practical matter, is this a priority item for this session of Congress to pass?

Senator MANSFIELD. It is and it has been, but the leadership can do nothing until this committee acts and the Rules Committee acts, and this committee cannot until it hears its witnesses and gets the recommendations of the chairman and vice-chairman, Senators Church and Tower, of the select committee.

Senator WEICKER. It is your hope that this would be passed?

Senator MANSFIELD. Yes; indeed.

Chairman RUBIOFF. If the Senator would yield, we have 8 days of hearings with 25 witnesses running seriatim. When we come back after the Lincoln Day recess, on the first two days, we will start a mark-up session. If we can get a quorum of this committee, I would hope to report this committee's work by March 1 for the Rules Committee to look at.

If I have cooperation from the committee as a whole, I can assure Senator Weicker and the majority leader that we will have a bill for you by March 1 to be considered by the Rules Committee.

Senator WEICKER. I very much appreciate the commitment of the chairman. I will make a prediction.

If we do not pass the bill in the year 1976, you are not going to have a bill passed. I think that is the seriousness of the situation.

Senator MANSFIELD. I would not disagree with the Senator from Connecticut, and I want to assure him and the members of the committee that if the bill is reported out, as far as I am concerned personally, I intend to make every effort to get it up as expeditiously as possible, so the Senate can render a judgment one way or the other.

Chairman RUBIOFF. Senator Mansfield, thank you very much.

Many members have more questions, but in all fairness to you and your three other distinguished colleagues, we are going to excuse you at this time. Thank you.

Senator PERCY. Senator Mansfield, I would like to say to Senator Glenn, I share his feeling, and it was only out of consideration for your schedule and the schedules of your colleagues that I suggested the limitation. But we would very much like to draw upon you informally for further assistance and help in this regard.

We all have the objective to make this a stronger Nation, and a stronger Senate as a result of these hearings. I think we are going to, and you started us off in a magnificent way.

Senator MANSFIELD. Thank you, Mr. Chairman.

Chairman RIBICOFF. Thank you very much, for the members of the committee.

In fairness to our three witnesses and members of this committee, we will hear the testimony of Senator Church, Senator Tower, and Senator Baker and after they have finished their testimony, we will then question the three Senators.

Again, our appreciation to the three of you and the other members of the committee for the outstanding work you have done on behalf of the Senate and also on behalf of the Nation.

Senator Church?

Senator CHURCH. Thank you very much, Mr. Chairman.

I have a prepared statement, but in the interests of saving the committee time, I would submit that statement.

Chairman RIBICOFF. Without objection, the statement will be inserted in the record following your testimony.

**TESTIMONY OF HON. FRANK CHURCH, A U.S. SENATOR FROM THE
STATE OF IDAHO**

Senator CHURCH. I will make my remarks extemporaneously.

First of all, let me say, Mr. Chairman, I am very much pleased and gratified by the testimony of the majority leader, who foresaw the need for a permanent Senate oversight intelligence committee years ago.

If ever his foresight was substantiated, it was in the course of the investigations of the Senate Select Committee in recent months.

We have conducted the first serious investigation of the FBI since its inception more than a half century ago.

We have conducted the first serious investigation of the CIA since it was established more than 30 years ago.

The abuses that we found must be viewed in part as the result of the dereliction of congressional responsibility. I cannot believe that if the Congress had been watching these agencies in which we entrust so much power and permit to operate in so much secrecy, that these abuses would have or could have occurred.

It is not my purpose this morning to review in detail the findings of our investigation. I think that most of you are aware that in the case of the CIA we not only discovered 20 years of illegal mail openings involving individual American citizens, the interceptions of 100,000 cables sent to or from individual citizens.

We found an extensive involvement in conspiracies to murder certain foreign leaders extending over a period of years. We also found that the Agency had engaged in spying activities directed against

American citizens, although this was expressly contrary to the provisions of the law of 1947 that created the CIA.

In the case of the FBI we found the beginnings of a secret police in this country, elaborate plans laid out for the purpose of harassing thousands of citizens whose only offense was that of disagreeing with the policies of the Government, which the Constitution and the laws of this country guarantee them the right to do.

We found vendettas conducted against the leaders of the civil rights movement carried to almost unbelievable extremes.

In the case of the Internal Revenue Service, we found tax investigations commenced against citizens concerning whom no tax delinquency was even suspected, for the purpose of harassment.

We found, in that Agency which I would regard as having more intelligence information on more American citizens than all the other governmental agencies combined, which they get on the 15th of April every year, a habit having formed by which that Agency transfers these confidential tax returns to other agencies of the Government, having nothing to do with tax matters, again, for purposes of harassment.

These abuses, Mr. Chairman, have to be prevented in the future. For that reason, the final 2 months of the committee's work will be devoted to a series of recommendations having to do with the correction in the existing laws that will give us some safeguard against the repetition of these abuses in future years.

The first recommendation that the committee will make has to do with the subject before you today, that is, the establishment of a permanent oversight committee.

Why is it needed?

The obvious answer is that it is needed because the present arrangements will not work, they have not worked. The intelligence activity of the Federal Government is far-ranging. It involves agencies that were mentioned by the majority leader, not only the CIA, but the DIA, the NSA, certain other national intelligence components of the Defense Department, and the counterintelligence and counterespionage functions of the FBI.

Jurisdiction is divided now between any number of committees of the Congress, the Finance Committee, the Foreign Relations Committee, the Armed Services Committee, and it is not possible therefore—the judiciary committee—for an adequate surveillance of that entire intelligence community to be exercised under current conditions.

Furthermore, our experience over the past months enables me to confidently tell you that the work cannot be done on a piecemeal basis or by a subcommittee of another standing committee which is primarily engaged in a different basic responsibility. It will require a well-staffed committee directing all of its attention to the intelligence community.

Again, by experience, it will require a very large part of the time of the Senators who serve.

So for these reasons, a permanent oversight committee is necessary, and I would like to make three observations having to do with three principles that I think need to be embodied in any legislation that your committee may recommend. Some of them have already

been mentioned; I will not prolong the discussion of those that have.

The first principle relates to the power that will be given this permanent oversight committee, and I believe that it cannot possibly do its work unless it has the right to pass upon the authorization legislation. In other words, it must be a legislative committee in that respect.

It must have that power in the normal way over those agencies that deal primarily with national intelligence, those would be the CIA, DIA, NSA, the Defense programs which deal with sophisticated technological collection systems and the counterintelligence functions of the FBI. All of these are what are called national intelligence.

Now, the investigating power of the committee should extend beyond these particular agencies to look into other intelligence operations in other departments that may be subject to abuse concerning which charge may be raised from time to time. So that the first principle, then, if this committee is to have the tools to do its work, would be the jurisdiction to pass on annual authorizations for those agencies that are primarily involved in strategic or national intelligence.

The second principle that I would endorse is the principle of rotating membership, both for the members of the committee and for the staff. That rotating membership, I think, should be patterned after the Senate itself: 6 years with one-third of the committee coming on fresh every 2 years in which manner two-thirds would remain experienced, but at the same time we would minimize the risk of having the committee co-opted by the very agencies that it seeks to supervise.

If that is true of the members of the committee, it is equally applicable to the staff.

The third principle has to do with the question of how we are going to resolve the problem of dealing with secrecy under the framework of the Constitution.

Everybody recognizes that the existing condition is chaotic and we would hope that with the creation of an oversight committee, procedures could be regularized for dealing with legitimate secrets.

I might say, in that regard, that it was possible for the select committee to work out arrangements with the executive branch for obtaining all of the information we required in conducting our investigation. We were very careful to provide maximum security so that no item of a sensitive national security character has leaked, to our knowledge, from the committee, during the whole course of its investigation.

I think that such a permanent oversight committee could be made relatively leakproof. I cite to you evidence of this record of the Joint Committee on Atomic Energy through the years.

However, leaks, as we all know, are not confined to the congressional branch. We have had the experience of many leaks from the executive agencies, often planted and planned, for the purposes of the administration. That has been a practice that all administrations have engaged in in the past, and we ought not to overlook the fact that the principal problem faced by the CIA at the moment in connection with leaks has to do with neither the executive or the legislative branches but with former agents of the CIA itself. It has to do with the Philip Agee syndrome which agents once having worked for the CIA and having become familiar with the other personnel and their assign-

ments leave the Agency and turn against it, and then publish the identification of these former employees and blow their cover.

That has been a principal source of difficulty. Senator Allen referred to the tragic death by assassination by Mr. Welch in Athens. We in the select committee took the precaution at the outset of our investigation to reach an understanding with the CIA whereby we asked for no names currently assigned abroad, we asked for no sources abroad of intelligence information because we did not think that the identification of intelligence sources or the names of employees assigned abroad were necessary for our work, and we did not even want to take the risk of the possibility of inadvertent exposure.

I believe, despite the confusion on this question, that once the facts are laid before you, it will be seen that there are ways of protecting legitimate secrets that can be resolved by a permanent oversight committee. Gentlemen, the question of secrecy and the right of the Congress to deal with classified information are basically questions that must be resolved if we are to preserve our constitutional form of government. That establishes the Congress as a separate but equal and independent branch.

I would hope that we would never accept the principle that it is exclusively the right of the executive branch to determine what a national secret is, and exclusively the prerogative of the executive branch to decide what may be revealed, and what they can conceal, because once we do that, the ball game is over.

To grant the executive such prerogative would, in my judgment, undermine any reasonable opportunity for a permanent oversight committee to expose wrongdoing, to expose the abuse of power, to correct inefficiencies, to expose illegal action contrary to the intent of the Congress and contrary to the well-being of this Republic.

I close these remarks with a plea that whatever recommendations are made by this committee following the hearings that you are commencing today that the prerogative of the Congress—the right of inquiring—be protected. There are ways that this can be done that take full account of the rights and responsibilities of both branches.

Our committee, the select committee, with your permission, would like to present for your consideration shortly, a bill which will contain the provisions that I have briefly outlined and others as well, a bill which we think would form a sound basis for creating a permanent oversight committee that can do its job, a bill that would conform to the Constitution, that would preserve the prerogatives of the Congress, and, at the same time, take into proper account protection of legitimate national secrets.

Chairman RIBICOFF. Thank you, Senator Church.

When could the committee expect the presentation of such a bill?

Senator CHURCH. Within the week, I would think. We just have final revisions to make on the proposals, and final votes will be taken into the committee.

Mr. Chairman, I have a problem of timing today. If it is possible for me to respond to questions now, it would greatly accommodate my schedule.

Chairman RIBICOFF. Again, subject to Senator Tower and Senator Baker.

Senate Tower. I would certainly defer.

Senator BAKER. It is satisfactory.

Chairman RUBINOFF. I think we will stay within the 5-minute rule under the circumstances.

Senator Church, do we need intelligence agencies?

Senator CHURCH. Yes, of course we do. We need efficient, effective intelligence agencies.

I was an intelligence officer during the war. I know the importance of intelligence information during wartime; I have learned the importance of it in peacetime. We could not conduct our foreign policy without good intelligence.

Chairman RUBINOFF. Should intelligence agencies engage in covert activity?

Senator CHURCH. This is a question on which a lively debate should be held. I think that covert operations unconnected with the collection of intelligence information presents an entirely different issue. It ought not to be confused with intelligence, because it has nothing to do with intelligence.

I do not think that there is any argument on the proposition that the collection of intelligence must be drawn from various sources, including clandestine or covert sources, but covert operations, as distinguished from the collection of intelligence, has to do with the attempt to secretly manipulate events abroad in ways that are thought to serve the interests of the United States, and here there has been much bad judgment.

My own view is that most of the covert activity that we have engaged in in the last 20 years has done this country far more harm than it has done us good, and we must recognize in our kind of society, no matter what kind of precautions are taken, in due course covert operations, whether they take place in Chile or in Laos or in Iran or in Angola or in Italy, wherever they take place, are going to surface, and when they do, they expose the United States to censure, particularly when those operations are contrary to the professed principles on which this country stands, as in the case in Chile, where we undertook to overthrow by clandestine means a government that had been freely elected by the people of Chile. This action was clearly against the traditional principle by which we have stood through the years of self-determination.

When these things happen, Mr. Chairman, they injure the good name and reputation of the United States, and that should always be weighed in the balance when a covert operation is contemplated.

Chairman RUBINOFF. You mentioned the so-called Agee syndrome.

Should there be a restriction of any kind of former members of an intelligence agency from going public with their information after they leave the Agency?

Senator CHURCH. Yes, I believe the Agency lacks adequate tools to protect itself in this regard. Today the Agency enters into an agreement with employees, but there is no way that they can enforce that agreement unless they can anticipate that the agreement is about to be breached and go into court for some kind of injunctive relief, and that is a very rare case.

So I myself believe that a criminal sanction applicable to employees who break their agreement with the Agency would be appropriate, if

it were carefully limited to the identification of CIA agents on assignment or abroad, or to the identification of intelligence sources abroad.

I do not see any possible justification for disclosures of that kind. We must be very careful when we frame criminal laws not to write the sanction so broadly so it can become a shield to protect the Agency from exposure of wrongdoing or abuse of power or illegal or illicit action, but a carefully drawn provision of that kind added to the criminal code, I think, would be appropriate and is probably necessary.

Chairman RIBICOFF. I have time for one more question.

Do you think that the intelligence agencies under supervision by this new oversight committee should brief the new committee before undertaking any especially sensitive activity or inform it after it has done that activity?

Senator CHURCH. Mr. Chairman, if we are going to set up this committee and not give it the right to obtain in advance of a significant new covert involvement the information concerning it, we will give it very little opportunity to do its job.

Yes, I think if we had had such a committee in place, it should have had the power to require the administration to brief it in advance of the Angola operation.

What good does it do the Congress to be told after the fact that the President has decided to involve this country deeply in a civil war in Africa and has spent \$50 million and then tells the Congress only because he has run out of money and needs more?

If this committee is to perform its role, then constitutionally we must remember that the Senate of the United States is to advise as well as to consent in foreign policy matters, and if it is to give its advice, it must have advance notice of significant operations of this kind. Otherwise, it is simply told after the fact, after it has lost its chance to advise the President at all.

This does not mean that the committee should interfere with the President's constitutional right to ignore congressional advice. That is quite another matter. But to deny the committee the opportunity to give advice would seem to me to be putting blindfolds on the committee.

Chairman RIBICOFF. Senator Percy?

Senator PERCY. Thank you, Mr. Chairman.

Senator Church, you mentioned that there would be a proposed bill within a week. Would that bill, in your judgment, have unanimous approval of the committee or will there be a minority and a majority suggestion?

Senator CHURCH. I had thought that there was a unanimous consensus on the committee. I am now told that there may be some dissenting votes, but I believe that depends on the final form of the bill. We still have some questions to resolve, and I do anticipate that whatever we finally agree upon will have the strong support of the majority of members.

Senator PERCY. Obviously, I think it would help our committee to have as great a unity as you can on yours, but we certainly would want the benefit of minority reports if they are strongly felt.

Senator CHURCH. I can only say heretofore that we have worked very hard to reach a consensus on the committee. We were even able to do that in connection with the assassination report. I would hope that we would continue to work in that same spirit.

Senator PERCY. Do you feel that covert activities must be carried on by the U.S. Government in its national interests?

Senator CHURCH. I think that covert activities in the past 20 years of the kind that we have engaged in have done this country much more harm than good.

Twenty-five years ago, this country had a matchless moral position from which it exercised immense leadership and influence in the world. Anything the United States stood for was automatically endorsed by three-quarters of the governments of the world.

Now we have had 25 years of manipulation by methods that were plainly copied from the KGB: coercion, false propaganda, bribery, abduction, attempted assassination, and where are we at the end of that 25 years?

Senator PERCY. Some would say that these activities were not as apparent until the creation of the Senate select committee and the publicity given in the last few months have far exceeded that of the last 30 years.

Senator CHURCH. That would not be true. There are those who would say that, in fact, we are now the targets of what seems to me to be an apparently orchestrated effort to undercut the committee's recommendations.

Senator PERCY. Do you know of covert activities that were carried on in our national interest and served our national interest and should have been carried on?

Senator CHURCH. I think there have been some. I could envision circumstances that might require others. But I would say on balance—not because of the revelations of recent weeks, but because of the revelations of 25 years, you cannot keep a free society restricted by keeping secrets as is done in a police state.

Long before our committee was set up, the people of the United States knew about the CIA involvement in Guatemala; we knew about the secret war in Laos; we knew about the Bay of Pigs; we knew a lot about the Chilean affair and many, many other disclosures. We knew about the CIA's work in Iran and other places.

So the world has been a witness, and will be a witness again, to covert activities because in time they will surface.

I say today when we put our name on a resolution we have three-quarters of the world automatically against us.

I think that we have eroded away our own strong moral position by thinking that it is necessary to engage in this activity even when contrary to our professed principles. I think this was a serious mistake.

Senator PERCY. Should this committee established by the Senate have the power of veto over covert activities?

Senator CHURCH. No. As I said, I do not think constitutionally that such a committee could have the power of veto, but it should have the opportunity to advise the President, and the President can then accept the advice, he can modify his proposal in conjunction with the committee's recommendations, or he can ignore the committee's advice and go ahead on his own. If he does that and a pattern of that kind were to develop, then this committee would have the legislative tool that always is reserved to the Congress—that is, holding up the purse-strings if this were necessary.

Senator PERCY. If it were a criminal offense for a member of the intelligence community to reveal classified information—should it be a criminal offense if a Senator or a member of the Intelligence Committee's staff revealed such information?

Senator CHURCH. We have, in our select committee, provided rules that would require immediate dismissal in the case of anyone on the staff.

Senator PERCY. That is quite different from criminal.

Senator CHURCH. That is right. We were not in a position to pass a criminal law. We had to deal with it as we could.

Our rules have been patterned after those of the Judiciary Committee of the House in the impeachment hearing, and I think similar rules could be adopted by any permanent oversight committee. The secrecy agreement that is entered into between employees of CIA and the agency was also entered into in a somewhat different form between the staff members of the select committee and the committee, and that is a similar situation as the one I cited with the CIA and a similar criminal penalty could attach if the Congress felt that this was advisable.

I am speaking now——

Senator PERCY. I think that members are subject to criminal penalties on income tax evasion. I think we should consider whether we should place ourselves above the law or put ourselves under the same sort of penalty if we reveal secret information. Thank you.

My time is up, Senator Church.

Senator CHURCH. I had reference in my answer to staff employees of the committee, as I had to staff employees of the CIA.

Chairman RUBINOFF. Senator Allen?

Senator ALLEN. Thank you, Mr. Chairman.

Senator Church, would you agree that this committee, if established, would have a more comprehensive and far-reaching authority in this particular field than any other standing committee of the Senate?

Senator CHURCH. No; I would not think so, because I think it would exercise the same legislative authority over authorization bills as normal legislative committees do.

You see, part of the problem, Senator, is that the FBI has no statutory base, it has no authorization legislation. Its scope, its power now depends entirely on Presidential directives.

Senator ALLEN. Your committee could not go further in its activities than a standing committee in the Senate presently set up could go in the area of its jurisdiction, is that correct?

Senator CHURCH. Yes; that is correct.

Let me make it clear that my own concept is that we would have the regular authorizing, annual authorizing, authority for those agencies that are engaged in national intelligence, primarily in national or strategic intelligence. Beyond that we would have investigative authority to look into improprieties in intelligence functions of other agencies. We would not have the right to pass upon their authorizing legislation.

So its range of duties and powers would be comparable, Senator, to other committees.

Senator ALLEN. I sense that your support of covert activities, clandestine operations, is lukewarm at best.

Senator CHURCH. Yes.

Senator ALLEN. I note the statement of Mr. John A. McCone, former Director of the CIA, concerning whom no adverse comment has been made as far as I know. He states:

The ethics of clandestine intelligence operations have long been debated. Some would do away with it. The fact is, no international government forbids clandestine operations and they go on as they have for centuries. At least 40 nations today support clandestine services. No great state can abandon it.

Would you agree or disagree with that?

Senator CHURCH. It depends on the definition of clandestine activities. I have already said that the collection of vital intelligence information may have to be obtained from time to time by clandestine means, but we are under an old mystique because relatively little comes now from clandestine means compared to what we get by technical means.

I can see from time to time that we may have to use clandestine means to secure vital information. That is a different proposition, however, than secretly undertaking to overthrow the Government of Chile because the Chilean people did not choose a government that was acceptable to the President of the United States.

Senator ALLEN. You have stated, I believe, that in no event would the committee say that it disapproved of a covert activity and instruct the Agency not to proceed with it. That would never be done?

Senator CHURCH. That would be beyond the power of the Congress in this particular field.

As I said, I think the committee should be able to give its advice. It has been the lack of political advice that has led to some of the most horrendous decisions, and many of these covert operations, in the past. I think the Agency and the Government would benefit.

Senator ALLEN. How many times would the Agency have to go against your advice before you would suggest that appropriations to the Agency be cut off?

Senator CHURCH. Senator, this is a matter of political judgment, as it is in all cases.

The Agency takes its final direction from the President so that the conflict, if it exists, would not be one between the Agency and the committee, but rather one between the administration and the committee. We have had these conflicts in the past. They do not always or often occur, but there came a time when the Congress used the pursestrings to force an end to our involvement in a war that seemed both futile and foolish, and proved to be so, in Southeast Asia, and when the Congress feels sufficiently strong, it sometimes will resort to pursestrings, and that is its right.

This committee ought to have the same prerogative.

Senator ALLEN. At the time that this committee is set up, as I anticipate it will be, the work of the investigation committee will be completed?

Senator CHURCH. Yes.

Senator ALLEN. Would it be your thought that this committee would carry on the investigative work of the investigation committee and

that it would make these disclosures from time to time to the American public as to the operation of the intelligence agencies?

Senator CHURCH. Senator, I think any permanent committee must have full investigatory powers, and I would not pretend that within the limited time that we have had to deal with a very big investigative job that we have covered all of the bases, that we have looked into every closet.

Obviously, we did not have time for that. But we have a sufficient base upon which to make, I think, very valid recommendations. That was our purpose.

The new committee, the oversight committee, if it is made permanent would have the right to open up new investigations as it saw fit and it would have, and I think should have, the authority to make disclosures, to conduct public hearings if it chooses, and to handle the question of secrets in an orderly and regular manner. That is much preferable to the present arrangement.

I suggest to you that the present arrangement is so chaotic that no secrets can be kept.

I do not think that a committee of the kind that I would recommend should be limited in its option when it comes to conducting investigations or determining what should be made public.

Senator ALLEN. Thank you very much. My time has expired.

Chairman RIBICOFF. Senator Weicker?

Senator WEICKER. Thank you, Mr. Chairman.

Just very briefly, I think you pointed out with great clarity the necessity to distinguish between detail and policy.

In other words, I gather from the rules of your own committee, when you referred to not wanting the names, not wanting the sources but trying to get to the policy, I think that this is important. Automatically when you raise the concept of an oversight committee in an intelligence area, everybody gets to the detailed area rather than focusing on having policy in the hands of the Congress. Am I correct?

Senator CHURCH. That is correct. That was a distinction we wanted to make.

We found, for example, it was unnecessary for us to obtain on the record the latest devices by which the NSA obtains information, the technical devices. We did not really feel that it was important for the committee to have that information. We do not want that kind of information spread on the transcripts in a way that it might possibly be disclosed.

But it was important for the committee to know just what kinds of information the NSA was obtaining and just what the targets were and the reasons and the scope of its activities. All of these were policy matters.

It was important for us to discover that there was no basic statute determining the extent or scope of its activity, or that it all depended upon Presidential orders, Presidential edicts, really, and that has to be corrected.

The answer to your question is yes.

Senator WEICKER. I think that the American people have the right to know what the policy is on assassinating leaders around the world. If you want to do it, fine. If you do not want to do it, fine—but this is the judgment that should be left to the American people.

Everyone has the right, I think, to know whether that is going to be a policy of their government, and they never had that before.

Senator CHURCH. That is right.

I would hope that in that case assassination never again becomes an instrument of our foreign policy in times of peace. Our committee has recommended enactment of appropriate provisions in the criminal code to stop that. I think that is a question of public policy so serious that it ought to be determined as a matter of law.

Senator WEICKER. I do not want to switch focus. We are in agreement that these major policy decisions definitely should be in the hands of the Congress. The same holds true if we are going to actively involve ourselves in the destruction of foreign governments abroad, is that going to be an activity? I think everybody has the right to be heard on that.

We hear so much about leaks. This is not our business. This is not the President's business. This is not the head of the CIA's business. It is the people's business, it is as simple as that.

The difficulty that this generation is running into is—fortunately the country has become better educated, has become more aware, and therefore they are asking questions and they want to have a say in broad policy.

They do not want to know the names and addresses of agents, and so on, but they want to know what they are investing in terms of money and the reputation of this country.

Senator CHURCH. I agree wholeheartedly.

I think it is foolish that anyone should assume that an activity so broad that we are engaged in Angola could be kept secret. The best experts in the CIA I know were of the same opinion.

Senator WEICKER. Thank you, Mr. Chairman.

Chairman RIBICOFF. Senator Glenn?

Senator GLENN. Thank you, Mr. Chairman.

If you could set up an ideal situation between the executive and legislative branches of the Government and how we would oversee this, what kind of group would you set up here on the Hill? Would it be the single committee of the Senate that you are talking about, or would it be a joint committee?¹

That is what I am getting to. We might as well get straight to it.

Senator CHURCH. Senator, I would not object to a joint committee, if the House were amenable. But I think the importance of establishing a Senate committee now, is so great that I would hope that this bill would not take the form of a joint committee bill and then sent to the House and then lost there for a lack of support.

Senator GLENN. Is that a major consideration in not making a joint committee? Just the politics on Capitol Hill?

Senator CHURCH. That is one of the considerations. It is also based on our previous experience. When the select committee was first established, the leadership did make an attempt to establish a joint committee. The House preferred to go a separate route.

We have had no indication that the House is disposed otherwise now.

¹ Further information submitted by Senator Church is set forth on p. 44.

My personal position is not adamant on this point. If the Congress is prepared to set up a joint committee, I would be prepared to accept it although I believe a committee for each House would be best.

Senator GLENN. I do not want to put words in your mouth, but I would gather from what you are saying, you look at our single Senate committee as a fallback position from the ideal that we would set up if we had our "druthers." We would rather make it a joint committee.

Is that correct?

Senator CHURCH. I think the executive would prefer a joint committee, because that would focus the activity in one committee of the Congress rather than in two.

Presently, as you know, there are six different committees that receive information on covert operations. I believe the executive would prefer as much of a consolidation as possible.

I think we could get along best with a House committee and a Senate committee. The responsibilities of the Constitution dealing with foreign policy do differ from those in the House, and I support a Senate committee. I think it has very definite merit.

If the House chooses to convert it into a joint committee, I would have no objection to that, as long as we have a committee that has the power to do the job.

Senator GLENN. Here is my concern. I am concerned, you are concerned, completely about the secret aspect of this. A committee is going to be dealing with some of the most highly sensitive information we have available in Government and trying to give oversight to it.

Now, the way we are going, I see four congressional committees involved with this. The Secretary of State has said he is providing information and so on to eight different committees up here. We are saying that there is so much proliferation nobody knows what is going on. We need one central authority, yet it appears in the Senate, we might have an oversight committee that would just have authorizing authority, with the appropriations authority over in the appropriations committee which, unless they are just a rubber stamp, they are going to have to look into this and have their own people involved.

We are saying the House will probably set up their comparable committee. They in turn will probably have an appropriations committee. We don't know who else might be involved with it over on the House side.

Already, I can see 4 different committees having authority, each with their staffs of 50 or 75 or whatever the numbers of people involved with these committees are.

We are already talking, just to add that all up, it comes up to something like 350 or 400 people, if only those 4 committees are involved.

To expect us to keep secrets—even if my figures are off by 50 percent, it is still rather astounding.

Would you care to address yourself to that? The single committee of the Senate and a single committee of the House versus a joint committee, and this proliferation of secrets which is going to be virtually impossible to keep on that basis, as I see it?

Senator CHURCH. Senator, even what you have described is a distinct improvement over the present arrangement. However, it is obvious that the greatest consolidation could be achieved through the establishment of a joint committee, that would reduce the proliferation the most and from the standpoint of security, that would be the best approach, but that is not the only consideration.

Senator PERCY. Senator Glenn, would you yield?

Senator GLENN. Certainly.

Senator PERCY. I wonder if you could possibly entertain this thought. We cannot do that on a joint committee. I think we are going to create our own Senate committee and then we do have the authority to combine the authorization and appropriation in one committee.

Why not try that?

Would you care to comment on that?

Senator CHURCH. I think it is a very interesting idea. I do not know if the Senate would consent to it, because it breaks from the traditional practice, but we have presented here some novel ideas concerning this committee. I think they should be incorporated; I hope they will be incorporated.

Senator PERCY. Frankly, I am prepared to support that concept and start that pattern.

Senator CHURCH. I like Senator Percy's suggestion and I think that it should be considered.

Senator GLENN. My time has expired, Mr. Chairman.

Chairman RIBICOFF. Senator Brock?

Senator BROCK. I have no questions.

Chairman RIBICOFF. Thank you very much.

Senator CHURCH. Thank you for your courtesy, Mr. Chairman.

Senator PERCY. Mr. Chairman, may I ask one further question?

Chairman RIBICOFF. Yes.

Senator PERCY. Should the intelligence committee have a unilateral right to disclose previously classified information?

Senator CHURCH. I think that it is the right of the Congress to decide what must be kept secret and what should be disclosed in the public interest.

Now, the practice in the past has been to give that prerogative to the committees of the Congress. When the assassination report was issued, it was done on the authority of the select committee under an interpretation by the Parliamentarian of current rules.

Some have suggested that the committee ought to take its recommendations to the Senate as a whole and that the Senate as a whole should decide whether to disclose classified information over the objection of the Executive. In most cases, they have worked it out with the Executive, but in the case of a collision, that suggestion has been made.

I am not wedded to it at all. The more I think about it, the more I wonder whether you can really take such a matter in such a secret session of the Senate and hope to preserve that secrecy, whatever the Senate may decide. I think you should give very thorough thought to the fact that past practice has left this to the committee, and I think that the committee would make no disclosure except by majority vote and that the committee, or that the Ethics Committee of the Senate,

could censure or even remove a Senator who, as a member of the committee, failed to comply with the rules and regulations of the committee itself in respect to classified information.

Thank you.

Chairman RIBICOFF. Thank you.

[The prepared statement of Senator Church with supplemental material follows:]

PREPARED STATEMENT OF HON. FRANK CHURCH, A U.S. SENATOR FROM THE STATE OF IDAHO

I am very pleased to appear before the Government Operations Committee to give my views on the question of whether to create a new Standing Committee of the Senate to oversee the intelligence activities of the United States Government.

During the past year, the Select Committee to Study Governmental Operations With Respect to Intelligence Activities has, in accord with its mandate, S. Res. 21, investigated a host of allegations of abuses by the intelligence agencies of the United States. The Committee is in the process of completing its investigation studies and hearings into the main areas of abuse assigned to the Committee by the Senate by the terms of S. Res. 21. We have already issued public reports on Assassination, Covert Action in Chile, and the interception of communications of U.S. citizens by the NSA, the improprieties and abuses of the COINTEL program of the FBI, as well as a report on the harassment by the FBI of Martin Luther King. In the Committee's Final Report, which will be completed at the end of February, the findings of the Committee's investigation and recommendations for the future will be set forth.

The abuses and improprieties of the intelligence agencies that have already come to light underline the necessity to understand the nature of secret activities of the United States Government and by so doing, come to a judgment as to what extent secret activities are necessary and finally determine how such necessary activities are to be fitted into the existing Constitutional structure.

Over the past year, the Committee has carefully examined the intelligence structure of the United States. Considerable time has been devoted on the part of the members and staff in order to understand what has been done by the U.S. Government in secrecy over the 30-year period since the end of World War II. The Committee's purpose, in this regard, is to recommend, on the basis of sound knowledge, workable means to prohibit in the future, secret practices which clearly have harmed the country or abridged the Constitutional rights of American citizens. At the same time, it is clear that there are many important governmental activities of the U.S. that must be conducted in secrecy. In some cases, the security and the very existence of the nation are at stake.

For 200 years, Constitutional government has flourished in the United States. The Constitution has stood the test of major wars and civil rebellion; the country has grown in size from 10 million people living along the Atlantic seaboard to a nation of 215 million which spans a continent and is the recipient of the greatest prosperity the world has ever seen. In like proportion, our government has grown in size, complexity, and power.

The procedure for making national decisions is set forth in the Articles of the Constitution. For the processes of open government, these procedures have worked well. But since World War II, in steadily increasing degrees, policy-making and decision-making of national importance have taken place in secrecy. The cautions expressed by the founding fathers and written into the Constitution to prevent policy-making or decision-making from falling into the hands of one man or a few men have been set aside by the imperatives of secret government. The justifications given for secrecy have been "national security," "the requirements of national defense" or the "confidentiality required by sensitive ongoing negotiations or operations." In general, these reasons have been accepted as valid, although the Watergate affair, the secret war in Laos, the secret bombing of Cambodia were all instances of the misuse of power enhanced by secrecy.

If the range of secret activities undertaken in the past few decades is examined from war on one end of the scale, to relatively harmless activities involving the collection of intelligence on the other, it is clear that in some instances they have violated our own laws, our treaty obligations and have infringed upon the rights of U.S. citizens.

Despite the proven dangers of these activities, no means have yet been developed which would enable the Congress to carry out its Constitutional responsibilities to consider, and as appropriate, approve, through a formal vote or other means of affirmation, necessarily secret activities by the U.S. Government.

The United States cannot go to war except by vote of the Congress. Yet, the U.S. has gone to war secretly by the decision of the President alone. The supply of weapons to other nations, if done openly, requires specific Congressional authority. Yet, weapons have been supplied to a number of nations in the past without Congressional knowledge or approval. Since the end of World War II, billions of dollars have been expended for secret intelligence activities without Congress, as a full body, having voted knowingly for these funds.

In reaction to the subsequent and often adverse impact of secret intelligence activities, the Congress has attempted to act, unfortunately usually long after the fact. At best, it has been able to curtail some of the more damaging activities. In recent years, more and more information about these activities, whether past, ongoing, or contemplated, has been revealed. The revelation has often, all too often, created public turmoil. Regrettably, to this day, Congress has not yet formulated a method for disclosure of secret information even in cases where the majority of Congress may believe such disclosure would serve the public interest. The result is often the release of information by what are called "leaks" by individuals who approve the disclosure and justify it as an act of conscience.

The creation of a standing intelligence oversight committee is an important step toward establishing an agreed-upon procedure by which problems of national importance that are necessarily secret in character can be addressed within the constitutional framework.

The Committee is now considering the final version of a bill which I expect to introduce in the next few days. The main provisions of the bill have been developed over the past six months. They will be largely based upon the experience of the Committee itself over the past year, but will also take account of suggestions made in the past, including provisions in other Resolutions now before the Government Operations Committee. In the process of discussions and negotiations with the executive branch on these matters, the Select Committee has become sensitive to the particular needs of our intelligence agencies. In addition, during the past month, the Committee has endeavored to work with the executive branch to narrow the points of disagreement concerning oversight. The Committee is of the view this joint effort has led to a better understanding of the respective problems of the two branches, and has resulted in legislation that places in proper balance the responsibilities imposed upon both branches by the Constitution.

It is my view that a nine-member Standing Committee should be created. Its membership would be chosen by the leadership of the Majority and Minority, with the ratio fixed at five for the Majority, to four for the Minority. There would be a Chairman and Vice Chairman chosen by the Committee's members. No member could serve on the Committee for longer than six years. Membership would be staggered in the fashion of the Senate, that is, two-thirds would have had four years of service, while one-third would be new to the Committee. This rotating membership would offer the advantage of injecting, at regular intervals, the fresh views that new members generally bring, while assuring that the majority of the Committee would be reasonably experienced. In addition, this unique system of rotating membership represents a means of minimizing the risk of cooption by the very agencies being supervised.

The rules governing the conduct of the Committee staff are also a serious concern. The staff of the Committee would be limited, as are the members, in the time that they may serve. As is the case with the present Select Committee, staff members would be required to meet strict standards for security clearances, developed jointly by the Committee and the Executive branch. Background investigations would be done by the FBI, but the final determination would be made by the Committee itself. In addition, staff members would be required to agree not to disclose any information obtained while in the service of the Committee without the express approval of the Committee. This obligation on staff members would remain in effect after members of the staff had left the Committee.

The jurisdiction of an effective Committee would have to include the oversight over what is known as the "national intelligence community." Because of the limitations of present committee jurisdictions, no committee presently

is able to exercise oversight over national intelligence. At the present time, the Committees on Armed Services, Foreign Relations and Judiciary, have been faced with the problem of overseeing fragments of the intelligence community. No committee has had the required full mandate to look at national intelligence as a whole.

The oversight committee would have jurisdiction over the CIA, the NSA, the DIA, the "National Intelligence" Components in the Department of Defense budget, and the intelligence portions of the FBI. The Committee, over the past year, has found that these agencies have worked so closely together, that unless there is the clear ability to look at all of them, oversight cannot be effectively carried out. My proposal would not exclude committees with existing jurisdictions over particular elements of the intelligence community that fall within their larger oversight duties. Obviously, it is necessary for the Armed Committee to know the requirements and, to some extent, the activities of the NSA and the DIA to be sure that the Department of Defense's activities are of a piece. On the other hand, the bulk of the CIA's activities are not concerned with military matters. For a variety of reasons, the counterintelligence activities of the FBI and CIA have not been the subject of adequate oversight in the past. A new oversight committee would constitute a new jurisdiction, which would bring together all these disparate elements of the national intelligence community which are now scattered among several Senate committees and those which are not covered by any committee.

National intelligence includes the collection, analysis, production, and dissemination and use of political, military, and economic information affecting the relations of the U.S. with foreign governments, and other activity which is in support of or supported by a collection, analysis, production, dissemination and use of such information. National intelligence also includes, but is not limited to clandestine activities such as covert action and some activities that take place within the United States such as counterintelligence. In general, these are the activities that would be under supervision.

Since 1950, there have been over 200 proposals introduced into the Congress which would have created some form of an intelligence oversight committee. The need for oversight has been evident for a long time. For a variety of reasons, including lack of time, the existing Standing Committees have not been able to meet the need. We believe that a new Standing Committee with overall jurisdiction is the correct answer to the problem that has been evident for at least 25 years.

The main legislative tool required to effectively carry out oversight is annual authorization authority for the CIA, NSA, DIA, the counterintelligence portion of the FBI, and some other national intelligence groups found in various departments and agencies. The power of the purse is the most effective means that the Legislature can have to assure that the will of Congress is observed. There has never been an annual authorization of the intelligence community budget. The oversight committee, for the first time, under appropriate security safeguards, would be enabled to consider all budgetary requests of the national intelligence community on an annual basis.

The second legislative power required by an oversight committee to function effectively, is the right to acquire necessary information. It is absolutely vital that the oversight committee be kept "fully and currently informed" on all matters pertaining to its jurisdiction. The executive branch should also be obligated to answer any requests made by the Committee for information within its jurisdiction. In my view, the right to information should be based upon the existing language of the Atomic Energy Act, Section 202(d), which has served Congress so well for more than a quarter century. In addition, consistent with the intent of Section 202(d) of the Atomic Energy Act, the Committee should also have the power to require information concerning activities of the intelligence community that the Committee believes it should be informed of prior to the initiation of any such activity.

The effect of such a provision would be to require prior legislative authorization of intelligence activities in the normal way. This authority lies at the heart of vigilant legislative oversight. It is the power of the purse operating in full conformity with the Constitution.

Without full knowledge obtained in sufficient time, meaningful oversight cannot be exercised. It is clear from present concerns and recent history that the country would have been well-served had a Committee of the Congress known in advance of certain actions, so that the advice of the Congress might have been given, and foolish, costly and harmful courses of action might have been averted.

Another important provision that should be part of any oversight bill is the procedure which should be followed in the event that the Committee wishes to disclose information obtained from the executive branch which the President wishes to keep concealed. The Select Committee has been involved in a number of instances over the past year in which there has been a dispute between the Committee and the executive branch. Almost all of these points of disagreements were resolved in a manner agreeable to both sides. However, there were a few instances in which agreement could not be reached. One such example was the question of the release of the Assassination Report. But in working towards the creation of a constitutional procedure for dealing with issues of a secret character, the larger question of the proper role secrecy should play in our democratic society must be carefully addressed. The constitutional system of the United States is best suited to make national decisions through open discussion, debate and the airing of different points of view. Those who advocate that a particular secret must be kept should have the burden of proof placed upon them. They must show why a secret should be withheld from public scrutiny. Inevitably, there will be differences between the Executive and the Legislature as to whether the national interest is served by maintaining secrecy in a particular case or whether the usual constitutional processes of open debate and public scrutiny should prevail. It is my view that important questions of this kind should be brought to the full Senate for decision.

I suggest the following as one possible procedure: If the oversight committee decided that it would be in the national interest to disclose some information received by the executive branch, it would be required to inform the executive branch of its intention. It would then be required to enter into a full and considered consultation concerning the problems raised by disclosure. If, after such full and considered consultation, the oversight committee decided to disclose any information requested to be kept confidential by the President, the committee would be required to notify the President of that decision. The committee could then, after a reasonable length of time, say ten days, disclose the information unless the President, in writing, informed the Senate through the Committee that he opposed such disclosure and gave his views why he opposed the disclosure of such information. The oversight committee, after receiving the President's objections, and if it decided that the President's reasons did not outweigh the reasons for disclosure, would refer the question to the full Senate in closed session for a vote. The Senate could, of course, refer the matter back to the committee for reconsideration, but if the committee sent it back again to the Senate, the issue should be decided by an up or down vote.

There are some who say that once a matter is brought before the full Senate, it will no longer be secret, even though it is discussed in closed session. In my view, once the Senate accepts as a valid pattern of action the kind of process I have just outlined, it would respect the injunction of secrecy. We must recognize that at this time there is no agreement as to what a valid national security secret is, and that the Senate does not now have the procedural means to make decisions concerning secret matters of national importance following the full processes laid out by the Constitution. One further step is required: Should the Senate accept a process such as I have just discussed, it should also accept the requirement of a penalty for improper disclosure.

In my view, if any member of the Senate or staff disclosed sensitive information of the Committee outside of the Committee, except in closed session of the Senate, such disclosure should be referred to the Committee on Standards and Conduct who would then investigate the improper disclosure and recommended appropriate action including, but not limited to, censure or removal from office.

The Senate has never addressed this issue squarely. It is my firm belief that it should do so now. Once the Senate comes to agreement as to how secret material should be handled, and receives the secret or sensitive information its responsibilities require, then it should also take on the responsibility of imposing upon itself rules to assure that improper disclosure as defined by the Senate will be punished accordingly.

If the premise is accepted that it is necessary for the U.S. Government to undertake some of its activities in secret, then it is incumbent on the Congress to develop a means to permit the constitutional processes to go on even though the matters under consideration are of a secret character. We are now in a position to take significant steps toward a solution of this vital national problem. To fail to act now, is to permit the continued erosion of constitutional government caused by secrecy unchecked.

UNITED STATES SENATE,
SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS
WITH RESPECT TO INTELLIGENCE ACTIVITIES,
Washington, D.C., January 30, 1976.

Hon. JOHN GLENN,
*United States Senate,
Washington, D.C.*

DEAR SENATOR GLENN: I have reflected on the question you asked me during the hearing held by the Government Operations Committee on January 21, concerning the desirability of establishing a Senate Committee to oversee the intelligence functions of the Government. I think it would be helpful if I put down my thoughts in this letter.

You asked what the ideal situation would be. Upon considered reflection, I am of the view that an oversight committee for each House would serve best to address the serious problems that have been raised over the last 30 years concerning secret intelligence activities of the U.S. Government. I am in agreement with those that maintain that the present situation whereby six committees of the Congress exercise some degree of oversight over covert operations is not a workable arrangement. It is a situation that verges upon the chaotic. Clearly, one committee for each House would be a far better solution than the three in each House that presently are involved in monitoring the covert action programs of the United States.

I support the proposal for an oversight committee for each House, because it is clear that the two Houses function in very different ways. The differences are many—some are a result of traditions of long duration. Other differences are accounted for in part by the size and character of electoral districts, length of service between elections, and, of course, the respective members of the two bodies.

One of the important aspects of the oversight proposal (S. 2893) now before your Committee that I have introduced with seven other colleagues on the Senate Select Committee, is a reporting requirement contained in Section VI. The oversight committee would have the obligation to alert committees of the Senate of information concerning intelligence activities in areas that might be of relevance to those committees. If this duty was carried out well, some of the main causes that have contributed to the proliferation of committees involved in monitoring intelligence activities would disappear.

In my view, the issues that have generated so much emotion over the last year or so will gradually lessen. In a time of consensus, oversight committees would function effectively without much fanfare or controversy. It is in a time of consensus, when oversight tends to become lax, that checks and balances are particularly desirable. The advantages of checks and balances built into the bicameral structure of our Legislature by the Constitution, of course, have merit in time of controversy, as the history of the last ten years so well shows.

If the responsibility for monitoring of highly sensitive operations is reduced to one committee in either House, it seems to me that it would be not only desirable, but necessary to assure that the perspectives of the two chambers are strongly represented by separate committees. In the past thirty years, secret wars have been waged, vast sums transferred to other governments without Congressional awareness and a host of illegal acts committed. In view of this past history of the lack of adequate Congressional oversight, it seems to me unwise to concentrate oversight in only one committee for the Congress as a whole. Further, it is my view that it is not only constitutionally appropriate, and in the best interest of the nation's security to have a committee for each body given the full powers required for effective oversight. A necessary requirement whether for two separate committees or a joint committee is that they must function under agreed upon procedures which would assure that valid national secrets are protected. There might be occasions when, for security reasons, or some other important purpose, the committees of both Houses might choose to meet together in order to reduce risk or to facilitate action. Such joint meetings between separate committees could easily be provided for.

In sum, it is my view that the advantages of separate committees for the Senate and House to oversee intelligence activities outweigh the possible advantages in limiting the chances for disclosure that might be derived by a single joint committee. I would welcome discussing this with you at your convenience.

With kind regards,
Sincerely,

FRANK CHURCH.

Chairman RUBINOFF. Senator Tower, again my thanks to you for your consistent courtesy and consideration for other members. You have been very patient.

**TESTIMONY OF HON. JOHN G. TOWER, A U.S. SENATOR FROM THE
STATE OF TEXAS**

Senator Tower. Thank you, Mr. Chairman.

Mr. Chairman, during the holiday recess, I had an opportunity to talk to a great number of people who were concerned about the matter of congressional oversight of the intelligence community, and their concern was very clear to me: That is, do not weaken or destroy the linchpin for the protection of this country, which is its intelligence arm.

I share this concern, and it was the overriding factor in my decision to select a leadership role in the Select Committee on Intelligence.

The select committee has pursued the inquiry mandated by Senate Resolution 21 in a manner befitting its critical importance to the Nation. I might say at this point that this committee has been more free of partisanship and ideological bickering than any one I have served on in my public life, and I commend the chairman for his talent in maintaining that climate in the committee.

It was perhaps inevitable that the surrounding events would gain sufficient momentum to pose the danger of a profound adverse impact upon the Nation's intelligence capability.

Public release of secrets by past and present government officials—former employees of the CIA who served as agents abroad, the select committee's own report on attempted assassination of foreign leaders and "leaks" from the Congress itself—I might say largely from the House—has given the American people a sensationalized view of the intelligence activities of the Government.

It has sadly become fashionable to play politics with secrets. To disagree with a secret operation of the CIA, anymore, does not mean to consider quietly the courses of action, but, rather, to hint darkly of it, or to disclose it to the media.

Against this backdrop of spreading concern for our continuing intelligence effectiveness and the clearly mandated will of the Senate that problems and abuses be identified and corrective action recommended, where warranted, the temptation to invoke expeditious resolution is justifiably present.

It has been argued that establishment of a single intelligence oversight committee in each house would limit the opportunity for disclosure while maximizing the chances for close monitoring and oversight of intelligence activities.

This approach is the cornerstone of the position advocated by the chairman. I am not prepared to accept the legislation as drafted by the select committee because I believe that serious analysis will reveal it to be both a premature and simplistic solution to an extremely complicated set of problems.

It is premature because many of the problems identified by our inquiry raise questions of the correctness of current intelligence community organization, problems which the President has indicated he will address in an upcoming reorganization proposal.

It is simplistic because it assumes that intelligence activities can be neatly divorced from other activities of the affected agencies and departments and that an attempt to vest intelligence jurisdiction in a single committee is workable under the existing jurisdictional scope of Senate committees.

Neither assumption is correct.

Every member of this panel can readily envision the problems which will ensue when we attempt to examine in the Judiciary Committee that part of the Justice Department which relates to the FBI's law enforcement mission while at the same time dealing with the Bureau's intelligence activities in the proposed Intelligence Oversight Committee.

For months we have been unable to draw a clear line between law enforcement and some intelligence activities. A label adopted for the purpose of complying with the authorization process mandated by the bill proposed by the select committee would do little to improve the situation. Analogous problems emerge when the programs of other agencies and departments are considered.

To say that the comprehensive proposal considered by the select committee does too much is not to condemn every aspect of it and other proposals under consideration by this committee.

For example, we must take clear steps to insure that no individual, including Members of Congress, may unilaterally resort to public disclosure as a vehicle for exercising a one-person veto over any secret operation which he opposes or finds objectionable.

That one individual in this society could so frustrate the pursuit of foreign policy is unthinkable.

In attempting to correct abuses and examine the propriety of intelligence programs and achieve consensus regarding the proper role of the legislative branch, we must not through the proliferation of bodies having access to sensitive information become the unwitting partners of those who would compromise either the safety of dedicated intelligence personnel or the overall capability and credibility of organizations charged with maintaining our security.

Recently, the chairman of the select committee spoke to another aspect of this problem.

He proposed criminal sanctions against former agents of the CIA who disclose names of fellow CIA agents.

I endorse the chairman's approach and would join him in seeking early enactment of legislation closing the great gaps in current non-disclosure sanctions.

Going beyond the question of such sanctions, we must also provide to the citizens of this country the assurance that the Government's intelligence agencies will not be turned upon them.

But just as surely must we provide an effective means for the preservation of intelligence activities in pursuit of American foreign policy.

This we can and must do.

While I too initially leaned toward the creation of a separate oversight committee, I am now of the view, based upon the experience of the select committee's inquiry, that haste and simplicity may be the enemy of solution.

The select committee's final report, which under Senate Resolution 21 must be made available to the Senate at the end of next month will be the culmination of a very extensive investigation into the misdeeds of our intelligence agencies, both domestic and foreign.

As envisioned from the outset the committee's report should be of assistance to the Senate committees having oversight over the various agencies conducting intelligence operations.

From this final report it is hoped that the consideration of remedies and necessary reform can proceed in a spirit of positive cooperation with the executive branch.

This consideration and cooperation should be the province of the present standing committees, where the report on intelligence operations can be viewed from the perspective of the role intelligence plays in supporting governmental objectives in the area of national defense, foreign relations, and internal security.

At the very least we should not begin, as the proposed select committee draft bill does, with the assumption that these bodies are incompetent to pursue implementation of the findings and recommendations of the Senate select committee.

Senator Mansfield has said all Senators are equal. I would assume that that means that members of the Armed Services Committee are also equal.

Currently it is the Armed Services Committee that has the oversight responsibility of the CIA.

To disagree with this proposal for another committee is not to disagree with the principle of oversight. Existing committees can and should perform required oversight.

Further, to treat intelligence activities of our Government as something that can be separated from these primary governmental purposes may weaken the ability of these committees to obtain the valuable information they need to make the critical decisions in their respective areas.

This same issue of the extensive support that our intelligence agencies provide to other branches and departments also has a practical effect.

It is unclear in the select committee's bill which committee of the Senate would have jurisdiction over programs that have a primary mission of national defense as well as an incidental but highly important, intelligence mission.

Because of the sensitive nature of these matters, I cannot elaborate on this question in this open session but suggest to you that the three committees presently sharing intelligence oversight be consulted privately and in closed session.

Another area for concern is the principle advanced in the current draft of the proposed bill which allows public disclosure of top secret information if the committee deems it in the national interest and the Senate by a simple majority agrees.

I would oppose any effort on the part of the legislative branch to require prior notice, consultation or approval of planned executive action before the initiation of secret operations in a foreign country in support of foreign policy.

Such a grant of authority to any committee would clearly impair the President's constitutional prerogatives in the area of foreign policy implementation.

In his recent state of the Union address, President Ford rejected such intrusions into the Executive's traditional role citing the intent of the framers of the Constitution. He stated:

The foreign relations of the United States can be conducted effectively only if there is strong central direction that allows flexibility of action. That responsibility clearly rests with the President.

In conclusion, Mr. Chairman, I commend to you the functioning of the U.S. intelligence community. The select committee has found the CIA, the Defense Intelligence Agency, the National Security Agency, and others to have people who serve in a highly professional and disciplined manner who are concerned about the protection of this country's secrets, and an effective and responsible intelligence capability.

The select committee and the public have been told that in spite of their discipline the morale of the staffs of these agencies is at an all-time low, and their effectiveness both here and abroad, hampered.

All that I suggest is that the Senate deliberations that effect the community not in any way contribute to this present, and I hope, transitory problem.

The questionable practices that came to the attention of the select committee after the most extensive investigation ever of a government organization, have been the rare exception, rather than the rule.

We cannot sacrifice the defense of our Nation for years to come based upon momentary concern over what appear to be aberrations in our experience with our intelligence structure.

Mr. Chairman, Senator Allen stated in his opening remarks that we have the finest intelligence gathering agency in the world in the CIA. I concur that it is the finest, but in no respect—or I should say, in some respects—it is not the most effective. It is not the most effective because it operates in an open society, and much is known of what it does.

That places it at a distinct disadvantage with the highly effective KGB—which, by the way, maintains clandestine infrastructures in virtually every country in the world.

Therefore, I do not think we should place our intelligence-gathering capabilities at an even greater disadvantage by hearing too much on what it does because of security.

Chairman RIBICOFF. Senator Baker?

Senator BAKER. Mr. Chairman, thank you very much. It is 12:25 p.m. I am sure the committee wants to recess as soon as it can.

I have a 12-page statement. If the committee would permit me, I would place it in the record. It deals generally with the subject matter at hand.

Chairman RIBICOFF. Without objection, it will follow your testimony.

TESTIMONY OF HON. HOWARD H. BAKER, JR., A U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator BAKER. I would like to turn my attention in the remaining time to a few items that have been of interest to the committee, and

a few items that were touched on by the chairman and by my good friend and colleague, Senator Tower.

I am in the unhappy and unusual position of being in disagreement with both Senator Tower and Senator Church on some major issues related to this question.

I find it absolutely essential to the welfare of the United States that we continue to have a strong, viable, effective intelligence-gathering apparatus for the United States of America.

In the course of the nature of things, it is absolutely essential that it be an executive department function, and that it be the prime responsibility, in fact, the exclusive responsibility, of the President and the executive department to implement the intelligence requirement, the intelligence gathering and processing responsibility.

At the same time, I find it totally unacceptable to me that we would not take heed from the lessons we have learned in this investigation, and put in place a congressional structure that would see to it that Congress is aware of the activities of that intelligence apparatus and that we have effective oversight.

I do not serve on the Armed Services Committee or the Appropriations Committee; and I never have, so I have not been privy to any of the briefings that the CIA or the other intelligence-gathering agencies have given the oversight subcommittees of armed services and appropriations.

I do not know about those briefings, so I cannot speak firsthand.

I have to confess that it is my general impression that the briefings and oversight have been minimal at best. This statement has not been meant to be a disparagement of either of those committees, or certainly of the members of those committees, but rather to underscore my belief that intelligence is too important to be an ancillary or a collateral function of a committee that has other primary jurisdictions, such as either armed services or appropriations.

As a matter of fact, I do not think there is anything basically wrong with the CIA or the FBI, except that nobody was minding the store, and nobody was conducting effective oversight.

I strongly suspect that we were not conducting effective oversight in the Congress, and even, on occasion, I wonder if there was much effective oversight from the executive department.

When you think about this business of oversight and of secret operations and autonomy, my mind goes back to another period in my life—that was when we were engaged in the investigation of the Watergate affair.

Senator Weicker and I invested a lot of our life, our professional life certainly, in that unhappy experience. I remember then, as we tried to obtain information about the activities of the intelligence apparatus for no other reason than to find out whether or not it was entirely coincidental, that of the five Watergate burglars, all five of them had been, and one still was, on the payroll of the CIA.

We had a heck of a time trying to decide, because you simply could not get information from the CIA.

Gradually, over a period of time, we did get some material. Then I began to wonder whether the CIA itself knew the extent of its operations?

I am not a devotee of the rogue-elephant theory. I think by and large most of the major activities and most of the minor activities of the CIA were conducted on authority and full responsibility. I was struck, for instance by the testimony by John McCone, a distinguished American, former Director of the CIA, who indicated that he had absolutely no knowledge, absolutely no information about this extensive plan for the assassination of Fidel Castro.

If the Director of Central Intelligence did not know, who was running the shop?

Regarding the assassination question, there were 26, I believe, documented efforts by the CIA to participate in, or to provide for, the assassination of Fidel Castro.

I really am concerned, sometimes, about the number, both in terms of the enormity of the event and in terms of the absolute lack of success. We should not have been doing it, but 26 times without a result?

But the final conclusion of the interim report of the Intelligence Activities Committee was that no President knew about the assassination attempts. If the President did not know about them, and the Director of Central Intelligence did not know about them, and the Congress did not know about them, who else did know about these attempts.

I rather suspect that the problem with the CIA did not occur because it was essentially bad. I do not think it is essentially bad.

Rather, these problems occurred because nobody was running the store.

Mr. Chairman and members of the committee, it is my view that you have to place an oversight apparatus in the Congress to do our share. We probably already have done our job with respect to oversight in the executive department. I have a hunch that it is going to be a long, long time before any President of the United States ever lets the CIA or the other intelligence functions of Government go their own way without somebody closely scrutinizing them.

I think that the deterrent effect already has occurred as far as the executive department is concerned. I think that we have to go that last bit, and that we have to formalize and put in place an effective single-purpose apparatus for congressional oversight.

As to the question of whether you are going to have a joint committee or a Senate committee, I personally prefer the separate committee arrangement because I happen to think that it works pretty well. I think that almost inevitably disagreements between the House and the Senate committees probably will lead us to useful and profitable conferences between the two Houses, a phenomenon that has served the Congress well.

Separate committees have the additional advantage of being the regular and ordinary course of events. I am not overly concerned with the question of whether you have two committees for authorization and two for appropriation, or two just for authorization and appropriation. I think that we can handle that without a lot of problems.

I prefer that. I certainly would not balk at the joint committee concept. I am the senior minority member on the Senate side of the Joint Committee on Atomic Energy. It works well.

It was set up at a time when we thought that the legislative history would show that our nuclear secrets were so grave and so closely held that you needed a joint committee in order to minimize the chance of leaks, to act effectively, quickly and promptly and to operate in close coordination with the executive department. Maybe the analogy still holds. Maybe that is a good argument for a joint committee in this case.

I rather suspect that, in the long term, the Congress would be happier with and would have a better experience with the traditional system of separate House and Senate committees.

On the question of prior notice to the committee of an important intelligence activity, I, of course, do not think we should so provide. Otherwise, intelligence gathering and processing is not an executive function.

I do not think the committee should have a veto power, and certainly not any committee member. Congress itself does have veto power. The constitutional authority of the power of the purse is a different and collateral question.

I do not think that there should be a condition precedent that you have to notify this new committee, or these two committees, before you can undertake some intelligence operation.

I do think we could borrow from the language of the Atomic Energy Act. Section 202 of that act, which simply says that the Joint Committee on Atomic Energy shall be kept fully and currently informed of the activities of the Atomic Energy Commission, at that time, and now ERDA and NRC under the recent reorganization.

"Fully and currently informed" has worked well. It has not been interpreted that you have to receive the advice of Congress before certain experiments can be taken or before certain deployments can be made. It has meant just what it says. Use your good commonsense, and keep us fully informed and keep us currently informed. Do not tell us after the event. Tell us currently.

Now, there is a 30-year body of precedent for what "fully and currently" means. I think we can draw on that to help solve the problem of when we should be notified, if, in fact, there is an intelligence committee.

I have strong views on the release of secrets and the disclosure of secrets, Mr. Chairman. I do not think an individual committee has any right to release a classified document. That is at variance with what I understand to be the ruling of the Parliamentarian of the Senate. I think he is wrong, he thinks I am wrong, and he is the Parliamentarian, so he wins.

I think that only the Congress of the United States can declassify a document that was properly and lawfully classified by the executive department. I have doubts that the full Senate can do it, but the Congress itself and not a committee, not the House, not the Senate, but the aggregation of the Congress itself is the coordinate branch of government, and there is no way that the President can direct that the Congress might not do this.

But it seems to me, Mr. Chairman, that the very least we could do is pay careful attention to rule 36 of the Standing Rules of the Senate, and interpret those rules to mean that only the Senate can declassify

documents. It would be my personal preference that declassification over the objection of the President could occur only with a joint and concurrent resolution of the two bodies of the Congress.

There are many other items I could cover, but this is a sample, Mr. Chairman, of things that were discussed while I was sitting here, and I thought the committee might like to have my views on them.

[The prepared statement of Senator Baker follows:]

PREPARED STATEMENT OF HON. HOWARD H. BAKER, JR., A U.S. SENATOR FROM THE STATE OF TENNESSEE

Mr. Chairman, I hope that the Eugene O'Neill would have forgiven me for describing the history of Congressional intelligence oversight as a "Long Night's Journey into Day." Beginning, I believe, with the introduction over twenty years ago, by Senator Mansfield of legislation to establish a Joint Committee on Central Intelligence, it has been a history of Congress periodically fortifying its courage to confront the issue of intelligence oversight—and then receding. I do not believe that this will continue to be the case.

I believe that the Congress, the Executive, and the intelligence community all are cognizant of the overwhelming and virtually incontrovertible fact that a new Congressional oversight capability is required; and I commend and thank this Committee for its initiative and judgment in conducting these hearings.

My personal concern with the issue of Congressional oversight found its genesis in the investigation of CIA activities conducted by the Minority staff of the Select Committee on Presidential Campaign Activities, and resulted in my recommending in my Individual Views in the Watergate Committee Report for the creation of a Joint Committee on Intelligence Oversight. Since that time, I have been privileged to twice join with Senator Lowell Weicker in introducing legislation to create such a joint committee; I testified in 1974 before the Inter-governmental Relations Subcommittee in favor of intelligence oversight legislation; and I have participated in the recent oversight deliberations of the Senate Select Committee on Intelligence Activities. Obviously, the breadth and scope of Congressional knowledge of intelligence activities has been elaborated and extended greatly since the Watergate Committee's CIA inquiry concluded in 1974, with the submission of the so-called Baker CIA Report; and my thoughts on the specifics of Congressional oversight of the intelligence community have undergone refinement and revision with the passage of time and my membership on the Select Committee on Intelligence Activities. But, one major aspect of my thinking has remained unaltered during the past three years—that is, Congress must create a single-purpose committee solely charged with the duty and responsibility to monitor intelligence activities.

There exists an almost antithetical relationship between the requirements of representative democracy on one hand, and an intelligence capability on the other. One requires secrecy and the other requires openness, and it is extraordinarily difficult to balance those two requirements in a free society. Yet, notwithstanding the logical and philosophical inconsistency presented by the existence of a highly-secretive intelligence apparatus in our American democracy, the global realities of this era are such that the maintenance of an effective intelligence is a fundamental requirement of our national security; and, in view of the current efforts to relax the tensions between the world's great powers, I believe that the intelligence function is of even more importance now than in the recent past.

Thus, while it is clear to me that Congress must strengthen and regularize its intelligence oversight responsibility, I think that we should scrupulously avoid legislation or policies that substantially impair the capacity of the President to fulfill his constitutional responsibilities in the areas of foreign policy and defense. Nevertheless, we must bring the fulfillment of the intelligence requirement more nearly into a cooperative undertaking by coordinate Branches of Government. There must also be a balance between the requirements of open government and the requirements of national security. When there is a doubt, the People's Branch, the Congress, must be privy to the information that is necessary to make its balancing judgment.

To those who argue that Congress cannot be trusted to participate in the gravely critical and sensitive operations of the intelligence community, I re-

spectfully suggest that they are losing sight of the explicit confidence in which Congress previously has dealt with national security issues of the highest order. Even though Washington is known as the City of Leaks, there are many instances where Congress has maintained and defended confidentiality with great dignity and effectiveness. As I have stated many times previously, the Joint Committee on Atomic Energy, on which I am privileged to serve, has never suffered a security leak; and that Committee is privy to some of the most sensitive material in the annals of the U.S. defense establishment.

Patriotism and responsibility are not the monopoly of the Executive Branch; and I am not impressed by those who contend that Congress is not to be trusted with the truth.

So, the question becomes one of not whether a new oversight committee should be created, but, rather, what form should the new committee assume. This Committee has before it for consideration S. 817, the Joint Committee on Intelligence Oversight Act, which was introduced one year ago by Senator Weicker, myself, and 28 of our colleagues. Since the House and Senate went their separate ways initially, however, in establishing separate committees to conduct the current and ongoing inquiries into intelligence activities, I have come to believe that the immediate creation of a permanent standing Senate Committee on Intelligence Oversight is desirable and necessary both for the fulfillment of our national intelligence requirement and for an orderly transfer of documentation and information between the new oversight committee and the Select Committee on Intelligence Activities, which is slated to expire next month. I, thus, urge the Government Operations Committee to take early and prompt action in creating a new Senate oversight committee to serve as a successor to the Church Committee and thereby pursue any remaining areas of inquiry. It is time, I believe, for the Select Committee on Intelligence Activities to conclude its deliberations; but I do not believe that the inquiry being conducted by the Committee should be left incomplete or undergo interruption.

With respect to the composition of the new committee, I believe that its membership should be limited; and I believe that nine members would be sufficient. I do not agree with those who advocate that membership on the new committee be based upon membership on existing oversight committees, but I think there is merit in having the committee members appointed by the leadership, rather than by the respective Party caucuses. Furthermore, my experience as a member of the Watergate Committee, the Church Committee, and the Joint Committee on Atomic Energy prompts me to strongly recommend that there be a vice chairman, rather than a ranking member, and that the ratio of minority to majority members be established by statute, rather than by the vagaries of the Senate ratio as a whole.

I also strongly endorse the proposal that membership on the new committee be limited to six years, a proposal which, I believe, was first advocated by Senator Weicker. I would also apply a limitation on the tenure of the principal committee staff, as committee employees are perhaps even more susceptible than Members to the development of client relationships.

By way of jurisdiction and authority, I strongly urge that any new intelligence oversight committee be vested with authority similar to that vested in the Joint Committee on Atomic Energy by Section 202 of the Atomic Energy Act requiring that the heads of agencies keep the committee "fully and currently informed." This Section, coupled with the authority to require the Executive Departments to "furnish any information requested" with respect to matters within the committee's jurisdiction, has provided the JCAE with unprecedented access to and consultation regarding the most sensitive of atomic energy undertakings.

While I generally agree that Congress needs more previews and less post-mortems, I am troubled by the proposal that the committee be empowered to require prior notification of especially sensitive intelligence activities as a condition precedent to Executive action. As I indicated to my colleagues on the Committee on Intelligence Activities, I believe that the Senate would be heading for at least conflict, if not insurmountable difficulty if it adopted such a proposal with respect to covert activities; and I respectfully suggest that our interests might be better served by defining the time frame contemplated by "fully and currently informed," so that the new oversight committee is notified within 24 hours, rather than a year later. I further think that "fully and currently informed" can and has been construed as empowering a Congressional committee to receive advance notice of the implementation of broad categories

of activities or operations, as opposed to specific undertakings. But, I do fear that the President will view mandatory advance knowledge of covert intelligence operations, *coupled* with the threat that this information might either officially or unofficially be disclosed by the Senate, as constituting a practical veto power exercisable by the Senate with respect to covert operations of which it disapproves.

I think that if we are not careful along these lines, there will occur a disincentive for Presidents to provide the oversight committee with information, notwithstanding the mandatory language of an act creating the new committee. As I remarked earlier, we should remain cognizant of the President's constitutional powers and responsibilities for the conduct of foreign policy; and I would hope that we could create a partnership, rather than an adversarial relationship, between the intelligence community and an oversight committee.

I also commend to this Committee's attention the jurisdictional approach taken in both S. 317 and by the Church Committee proposal. This approach is essentially dual in nature, and provides the new oversight committee with a general and unrestricted oversight jurisdiction over all foreign and domestic intelligence activities and operations on the one hand, and a more specific funding authorization authority over specified agencies on the other. Not only should a single-purpose oversight committee possess legislative and authorization authority for those agencies with major national intelligence responsibilities such as the CIA, DIA, NSA, FBI, and military intelligence, but it also should be made clear that there exists a general, all-inclusive oversight jurisdiction for all intelligence activities and internal security surveillance conducted by the Federal Government, so as to make sure that in some future years, meaningful intelligence functions are not surreptitiously transferred to some agency not within the oversight committee's primary jurisdiction. I am thinking in this instance, of the National Security Agency, which was created in 1952, by an Executive Order, and grew to a budget in excess of \$1 billion with literally thousands of employees, all beyond the view and knowledge of Congress.

Similarly, I would urge that the charter of a new oversight committee make clear that the Committee is to receive current and full information on the development of science and technology which would have a substantial effect on intelligence gathering and national security. This would avoid the development and implementation of an expensive, new intelligence gathering program, without the intelligent participation of Congress, such as occurred with respect to our satellite intelligence network.

Finally, Mr. Chairman, I would urge that provision be made for a representative of the President to sit in on the deliberations of the oversight committee, except in those cases where the committee elected to go into Executive Session, or consider purely committee business. This suggestion is premised upon the theory that a President ought to be more forthcoming and cooperative with an oversight committee if he had access on a current basis to the committee's efforts and intentions. While such a representative could not prevent committee access to classified or sensitive information, he or she could certainly monitor the proceedings of the committee, and, hopefully, be reassured as a consequence thereof.

In closing, I would suggest that the greater good would be the prompt and expeditious creation of a new standing Senate Committee on Intelligence Oversight, even if this leaves to another day resolving the questions of prior notification of sensitive operations and the authority of the Senate to disclose classified information. The question of the right of a Senate committee to disclose information which it has received from the Executive Branch certainly plagued the Watergate Committee's CIA inquiry--as a matter of fact, the CIA still has not acted upon an official Watergate Committee request for declassification of documents; and I believe that it is fair to say that the Committee on Intelligence Activities has been forced to spend an inordinate amount of time either discussing or negotiating the authority to disclose classified information. This is an issue which I certainly would like to see resolved, and I am pleased that the Government Operations Committee has conducted hearings in the classification area.

But, as much as I am desirous of resolving this issue, I even more would not want the creation of a new oversight committee to be jeopardized or delayed by an inter-Branch dispute over either declassification of information or prior notification of covert operations.

It is in this vein, that I propose, then, the creation of a new Senate Committee on Intelligence Oversight. I have great faith in the wisdom of this Committee

and of the Congress to fully consider and elaborate any ideas and to supply this requirement.

Chairman RIBICOFF. Thank you, gentlemen.

We will confine ourselves to 5 minutes to questions for both of you. You both may answer.

If there is any time remaining and other Senators have additional questions, they may ask them.

What bothers me, as I listen to Senator Church, Senator Tower, and you, Senator Baker, is whether or not you can produce a bill within a week?

There seems to be such a difference of opinion among the three of you.

Senator BAKER. I have the opinion that we will produce two or three bills, or at least two or three views. There will not be any shortage of opinion.

Senator TOWER. I think Senator Church was correct that a majority would recommend a specific bill. I think that is probable. I may not disagree with that. I may be joined by one or two others in recommending some alternative, or in recommending nothing, or in possibly recommending certain mandates by resolution to existing committees that do have some oversight responsibilities for the various intelligence collecting agencies.

Chairman RIBICOFF. The problem that we are going to be faced with, I believe, is that this committee will be under instructions from the Senate as to when we have to act, and it will help us if your committee could act within a week. I personally think that the committee would like your views in a separate bill or in a separate memorandum commenting on the committee bill, because we respect your opinion.

Senator Baker is apparently somewhere in between Senator Church and yourself. So that I would hope that within a week we could have either the committee bill or both the committee bill and your separate bill, if possible.

Senator TOWER. I think that is possible. Maybe a week is a little optimistic. I would say 10 days or so, and I think that probably a majority of the committee will agree with the recommendations made by Senator Church.

Chairman RIBICOFF. If that is not the case, I think we should request the leadership not to put a restriction on us or an order upon us to come up with a bill by March 1.

Senator BAKER. I might say, Mr. Chairman, I, along with Senator Weicker, have a bill before this committee. It has been here since 1974.

We reintroduced it as S. 317 and have 28 cosponsors.

Many of the provisions of that bill have been incorporated into the draft material that the Church committee is now dealing with.

Chairman RIBICOFF. I would assume that both of you would agree that we needed an intelligence agency in this country.

Senator TOWER. Absolutely, I think that is inherent in what I have said.

Senator BAKER. Absolutely.

Chairman RIBICOFF. You both agree that the intelligence agency should be able to engage in covert activities.

Senator TOWER. Yes.

Senator BAKER. I do.

I would like to modify that just a little, or explain my answer just briefly, Mr. Chairman.

I do believe that there is a requirement for covert activity as distinguished from covert collection. I think this is a highly sensitive matter and one that should be given careful attention by the President and on which especially the Intelligence Committee, if there is one, should be fully informed.

Chairman RUBINOFF. How would you react to a suggestion that, in the absence of war, the intelligence agencies could not engage in any covert activities which would be illegal in the United States of America?

Senator TOWER. I would react adversely to that suggestion, Mr. Chairman, because out in the world we do not play by Marquis of Queensbury rules. The Soviets do not. There are those who hold we are demeaning ourselves and placing ourselves in an inferior moral position when we commit acts that would be illegal in this country, however, that is another ball game out there. There are some that hold if we were to abandon any covert action of any kind or perhaps even the clandestine collection of intelligence, that the rest of the world would bring moral pressures to bear on the Soviet Union which would force them to do the same.

In my experience, the Soviet Union has never responded to the moral pressures of the rest of the world. We already play the game far more fairly than they do.

As I pointed out earlier, they do maintain clandestine infrastructures around the world that are Soviet-sponsored, and Soviet-financed. By virtue of the superior organization and discipline, wielding influence out of all proportion to their numbers in some countries, and out of all proportion to what the public sentiment may be in that country.

We do not maintain such infrastructures. We do, and have, supported pro-Western political elements in certain countries, and I think that we would have been remiss had we not done so.

Our objective is to try to create a climate in this world in which all people's can aspire to self-determination and have some reasonable hope of realizing that aspiration.

I think Portugal is a shining example of what can happen. Fortunately the moderates rallied and were able to take over, but it could have gone the other way. Of the people in that country, 12 percent voted Communist, yet the Communists effectively controlled the government in opposition to what plainly was the will of the people in Portugal.

I do not see why we should serve notice to the rest of the world that we will not in some way give some kind of support to prodemocratic elements in countries that are threatened by a takeover of a highly disciplined, well-organized, and dedicated Communist infrastructure.

Senator BAKER. I have some difficulty with this area.

One, if you are talking about activity in the United States or against American citizens. There is no legal or constitutional right to use extra-legal means.

Senator TOWER. Would you yield at that point?

Senator BAKER. Yes.

Senator Tower. I want to make it clear that I do not advocate doing things in this country which are not lawful, and I do not want to convey that impression.

Chairman RIBICOFF. To be specific, in the absence of war, an activity that would assassinate the leader of another country.

Senator BAKER. Let me continue for just a second.

I was about to say, Mr. Chairman, that our intelligence activities abroad are modified by constitutional provision; that is the war-making power.

In a peaceful, tranquil time, an assassination effort—certainly an assassination—would be an act of war.

We do not hold much with acts of war since our engines of war have gotten so big and unwieldy.

But that would be an act of war, and only the Congress under our Federal charter should deal with that determination, if you are going to commit an act of war.

On the broad question you put, and in response to the broad answer of my good friend, John Tower, do you want to limit the United States to play with the Marquis of Queensbury rules, of course not.

By the same token, John and I are about the same size, and we see eye-to-eye, and by the same token we do not have to be the biggest, meanest men in the valley. We have to use a little bit of judgment on how we are going to conduct intelligence activities.

The United States has a moral position, and we should always be aware and conscious of that position. We should formulate our covert operations to take account of American traditions.

My answer is no, do not hobble the intelligence agencies. There may be times when you have to play rough and tough, but do not play rough and tough just because you can.

Chairman RIBICOFF. My time is up.

Senator Percy.

Senator PERCY. As one who sees eyeball to eyeball with both of you, maybe we can have a strong union.

I was delighted to hear Senator Tower's rallying for moderation. I hope that will go for moderate Republicans too.

I would like to characterize some of the testimony that I have heard this morning, and the attitude that has been taken toward the CIA as an attitude of benign neglect by the Congress and sometimes by the President, and sometimes by the Director of the Central Intelligence Agency.

Senator Tower, is it your feeling that there has been as much of a lack of oversight as Senator Mansfield seems to imply, and as Senator Baker seems to imply?

Senator Tower. Yes, there has been, because Congress has insisted on it.

As I said in my statement, I am not opposed to oversight. I am concerned about our rushing in with some kind of premature and simplistic kind of organization that might at the outset ignore certain facts of life.

For example, I think that the best example falls in the realm of the Judiciary Committee. How do we separate domestic intelligence gath-

ering efforts from law enforcement? We cannot always make the fine distinction.

I predict that when we get to the Senate floor with a bill of this kind you are probably going to run into all sorts of jurisdictional jealousies.

Senator PERCY. Did you have a feeling as a result of your investigation that Directors of the CIA were unaware of certain major activities being carried on down below that in your judgment they should have been aware of?

Senator TOWER. That is a judgment call. In some instances they were, and in others, I think, that they were not.

I think that there might have been a little backchanneling going on sometimes from elements outside of the CIA to elements within the CIA. One highly placed person, for example, maintaining contacts with officers down below the deputy director level even. That kind of thing went on.

Really, what our interim report on assassination did was probably raise as many questions as it answered. I think maybe Howard would concur with me on that. It certainly raised a lot of questions that we could not find answers to. The principals are dead, or there is not adequate documentation, or perhaps some of the witnesses who appeared before our committee lied. We do not know.

Senator BAKER. There are some questions that we can still get answers to.

Senator TOWER. That is true.

Senator BAKER. That is a point I would like to touch on just briefly. I do think that any new committee—I think Senator Allen asked this question—any new committee that is established for oversight ought to at least have the option of looking further into some of the allegations that are unresolved—not as a primary project, but do not preclude such an undertaking.

As a matter of fact, I am going to propose that the Church committee turn over its papers and documents to the new committee rather than to the Archives, or the Library of Congress.

To put it in Aesopian terms, there were a lot of animals crashing in the forest. Some of them have now run across the highway. There are still some in the trees. We need to continue to inquire.

Senator PERCY. In looking at our oversight responsibilities and the power to be vested in the new committee, certainly it, in looking at and understanding the activities of the intelligence community, would have to look at funds expended. As I understand it, huge amounts of cash are used in intelligence activity.

Did you discover or find that there was any real oversight over how that cash is accounted for and whether there was adequate auditing as we have in every other agency or branch of Government? Or is that also a place we did not look and did want to see?

Senator TOWER. We did not get into line item disbursements of cash.

Senator PERCY. We have a responsibility in this committee for the efficiency and economy of government. I think we should look at how the money is handled in this Agency.

Senator TOWER. It has to be very carefully done.

There is a very cogent argument against making public precise expenditures in certain areas of intelligence.

Senator PERCY. I am not talking about that.

Senator TOWER. That telegraphs to the enemy what you are doing.

Senator PERCY. In the expenditures of cash, we should make sure there is an oversight or auditing function. I do not know how much auditing is done of the intelligence community from a financial standpoint.

I would like to ask you in the remaining moment or two I have, do you feel it is important that the new committee should be a major committee which prevents membership on another major committee, or should it be an add-on committee?

How do you feel about that?

Let us assume there would be a limitation of 4, 6, or 8 years.

Senator TOWER. I think it has to be made unique. If a man has to give up a position on one of the so-called exclusive committees to go on to this committee. He would rotate off of it, and when he rotated off he would have to come back on his original or another committee in a junior capacity, I think that is unfair. I think you would have to make some adjustment in the normal rule.

Senator PERCY. If he came back on the old committee there could be a provision that he would be restored to his previous seniority.

Of the two choices, do you prefer just having an additional committee for that period?

Senator TOWER. If you restore his previous seniority, you may displace a then chairman or ranking member of the committee. You have some problems even with that one.

Senator BAKER. I agree with Senator Tower. I think you have a serious problem if you do it other than as an add-on or an additional committee. I suppose you can do it the other way. I am afraid if you did it another way, if you made it a primary committee, you would deter some people, senior members of the Senate, from seeking membership on it.

Senator PERCY. I want to thank both of you very much indeed for very helpful testimony.

Chairman RIBICOFF. Senator Allen?

Senator ALLEN. Thank you, Mr. Chairman.

Do either of you see any potential for damage to the national interest through the enactment of the bill that Senator Church has outlined?

Senator BAKER. I am not really happy with all of the provisions of the Church bill, so that if some provisions or some of the versions I have seen so far were enacted, the answer to your question, in my view, would be yes.

On the other hand, if we look to the bill Senator Weicker and I introduced, with certain amendments and modifications, or with certain changes that have been suggested by staff to the draft bill, my answer would be no.

I think the crucial features of the select committee bill are: (1) Is there any effective or equivalent veto power? I do not think there should be. (2) Whether there are adequate safeguards——

Senator ALLEN. You think that the veto power of the committee would invade the field of the executive?

Senator BAKER. I do indeed. I think it would be unconstitutional, as well as undesirable. I also think that there should be careful scrutiny given to the methods and techniques that the Congress could use for declassifying material previously classified by the executive.

No. 3. I think that the practical effect must not be to demoralize or to dismember the intelligence family. I think that we can avoid all those things and pass a bill that will not jeopardize the national security or the effectiveness and efficiency of the intelligence apparatus, and this is what I would recommend to this committee for careful consideration.

Senator ALLEN. The report of the Senate select committee has not yet been made public in full.

Senator TOWER. No; as a matter of fact, we must distinguish between the recommended legislation and the report. The report is currently in preparation and will not be ready probably before March 1.

Senator ALLEN. Is it possible that the investigation committee did such a good job in pointing out the errors of omissions and the errors of commission, as full as possible, of the intelligence agencies that when this information is made available and has been studied that the existing committees and there are at least six in the two houses, having been alerted to their performance in the area of oversight, they possibly may turn over a new leaf and following the thought expressed by Senator Tower that the members of these committees following Senator Mansfield, that all of them are of equal importance and of equal ability, and equal in their observance of the law and the Constitution, that they might be willing to carry on oversight properly.

Senator TOWER. To begin with, to address myself to the quality contention. Thomas Jefferson said all men are created equal; I discovered when I went out for the football team that some are more equal than others.

I think, however, that we have to proceed on that assumption, and in my view, an alternative to the establishment of a committee for the purpose of oversight could be a specific resolution, which mandates committees with specific jurisdictions and responsibilities, to do their job of oversight in a more effective way than has been done in the past.

So I think that this is an option that should be taken under consideration.

May I say one more thing? The creation of this committee would not stop proliferation, as Senator Church in his prepared remarks, that he submitted for the record, noted, this would not deny other committees that need access to the intelligence community to have access, so it would be an additional committee, and I think that any committee of the Congress could get information from the CIA or the FBI, classified or not, on a need-to-know basis. So it does not stop proliferation. It would not stop Ms. Abzug.

Senator ALLEN. I understand that Senator Church, I believe, would be satisfied if the intelligence agencies carried on no covert activities at all. Senator Mansfield thought that the committee ought to be in on the origination of any covert activities.

Would it not be possible that if the committee, with its tremendous staff which I would anticipate in view of the tremendous staff you have already built up in the investigative body, would it not be possible that the intelligence agencies, after a covert operation has been cleared with

the committee, if they went overseas to perform the activity for the country, they might well be met at the plane by agents of the foreign country who would take them in tow.

Would there not be a danger of that sort, the matter of the cover being blown in advance?

Senator TOWER. I oppose prenotification and congressional veto of covert action. I think we should have covert action.

The nature of the beast itself is that agents are normally recruited in the countries they operate in or in third countries. The officers of the CIA that are sent overseas go under fairly light cover. Generally, people know who they are anyway without publication of it.

So I think you have to understand that that is the way it functions.

Senator ALLEN. Would you gentlemen agree that an amendment to the bill providing that no member of the investigation committee could be a member of the select committee? Would you look with favor on that amendment?

Senator TOWER. An amendment providing that members of the current select committee would be barred from membership from the legislative committee? I would see no reason to adopt that course.

Senator ALLEN. Would you anticipate that you would be on the committee merely move these nine members—

Senator TOWER. No, sir, I have had a year of it. I have neglected my work and my constituents and everything else.

Senator ALLEN. Is that what is going to happen?

Senator TOWER. I do not know who will go on it.

Senator BAKER. I do not know who would go on the committee either, As far as I am concerned, if it would take that to get something passed, I would forego the right to be a member.

My preference is not to do that. I think you have good men on both sides of the aisle on our committee. Some of them should be on the new oversight committee.

If it helps any for Howard Baker to say he will renounce his rights, if any, to be on it, I will do that.

Senator ALLEN. Are you both candidates for membership on the new committee?

Senator TOWER. I am not a candidate for membership on it.

Senator BAKER. I am not a candidate for anything that makes me unique.

Senator TOWER. As I understand the legislation I would, as a member of the Armed Services Committee, still have access to the intelligence community.

Senator BAKER. Let me say a word, if I may, in answer to a point made by Senator Tower in answer to a question by Senator Allen.

The question of the standing committees of the Congress having access on a need-to-know basis is a good theory but it just does not work. It did not work with the Watergate Committee and it did not work in many other cases, simply because the need to know was determined by the CIA.

Maybe you have to find something else, some other way to find an arbiter. That is one of the reasons, in my judgment, why there should be a single purpose, primary jurisdiction.

Senator TOWER. They have been very receptive to the Armed Services Committee when we have asked for things. We went into these

things in depth before the select committee did. The select committee did not come up with anything we had not already discovered in the Armed Services Committee.

Senator BAKER. Incidentally, I think that we are so far in the thicket now in Balkanizing the Senate with committees that some day we are going to have to settle down and figure out how we can consolidate our committees, give all Senators one committee, and reorder our lives. This is approaching the unworkable.

Senator ALLEN. Thank you.

Chairman RUBIOFF. Senator Brock?

Senator BROCK. Thank you, Mr. Chairman.

I want to go to a broader subject, but I could not agree more thoroughly with the last comment made by my colleague from Tennessee. The enormous frustration that some of us feel in this body with the current committee structure is almost impossible to describe. We have been trying for 3 years now, without success, to get the committee to even study the committee process—I might say with the endorsement of both leaders, the majority and the minority.

Someday, somehow, sometime we are going to do that. When we do, it will be a great step forward for the American people as well as for the members of the Senate.

I would like to ask you a more fundamental question. We are going to debate for the next several weeks the composition of this committee, its authorities in terms of funding oversight, and so forth. Maybe I could draw from you and from your experience an appraisal as to the committee's purpose, that is, oversight of intelligence per se. From your experience, is a reorganization of the intelligence apparatus—not the Senate, but the apparatus—something that this committee should seriously undertake?

Senator BAKER. This committee? You mean the Government Operations Committee or the new committee?

Senator BROCK. That falls without our jurisdiction, as a matter of fact, in terms of Government agencies.

Senator TOWER. I tend to concur with what Howard said. There is not much wrong with the CIA. I am not in a position to pass judgment on it structurally. That is for those who are better administrative experts than I am.

I would like to see what the President has proposed, because the executive branch has more experience in dealing with managerial matters in terms of the things that they wish to do. I cannot think of any significant changes I would make.

Senator BROCK. I think what I am reaching for relates to the other comment made by Senator Baker that in some instances, at least, no one was minding the store. That is, if no one was minding the store, the question is, why? Is there some loophole, some structural impediment, to adequate executive control?

I am not suggesting that we change the CIA. I am suggesting that perhaps we are spending too much time talking about covert activities. Covert activities are a very small part of the CIA's basic role and responsibility and function.

The more fundamental effort that they undertake is in a much more understandable area of general intelligence collection.

Is the structure of NSA, the various White House groups, the DIA, the CIA, is the framework for Executive control adequate?

Senator Tower. A good argument could be made for making the DCI and the head of the Central Intelligence Agency two separate people rather than one guy who wears two hats, but as far as the internal operation of the CIA, a great deal depends on the type of guy you have at the top, as to how well the store is being minded.

The very organization of the CIA tends to militate against a perfectly sound management, or clear cardinal rules of administration, because its work is compartmentalized, because you do not want too many people involved in one particularly sensitive operation.

The DCI himself does not know intimate details of all the operations in each compartment.

Of course, it is compartmentalized for security reasons, and I think it should remain so. The DCI, for example, probably could not give you the name of any agents abroad. He does not know them, and does not want to know them.

Bill Colby says I do not want to run around the world carrying all that stuff in my head.

So, it really does present an administrative problem. I am not sure how you could overcome it, given that this compartmentalized structure is necessary for security reasons.

Senator Brock. What bothers me, it has been recommended that this committee create an oversight agency of the Senate which would in effect exercise jurisdiction over every single form of intelligence apparatus in the United States and overseas. That is a remarkably broad mandate.

We are talking about agencies from ERDA to CIA, not just one or two.

Now, if we are going to look at that and have a committee look at it, should we, or should we not, authorize that committee, then, to undertake an analysis or a study of the structure for management for that?

Senator Baker. If you would permit me to answer for a moment, I agree with Senator Tower's proposal that the DCI might very well be someone other than the head of the Central Intelligence Agency. I think that is a good proposal, one that should be thought of more carefully, and perhaps implemented.

I think that the consolidation of intelligence functions of the Government is such a broad and delicate matter that it should be undertaken by the new committee and given careful attention. I am told that I believe that there are 62 agencies of Government that have some either intelligence, intelligence-related, or law-enforcement activity—62 of them. My offhand view is that the Director of Central Intelligence ought to be the coordinating point and responsible to the new committee so that there is a single point of contact.

Senator Brook. I accept that. The reason I raise the question is that I have, in my proposed legislation, a provision requiring such a study and a report back to the Congress for further action, but I am concerned that we not mix apples and oranges here. I think it is possible to give this new committee enormously broad jurisdictional mandate, that it not do anything well. That would be troublesome; I agree with my colleague from Tennessee that we need this committee.

Senator Tower. I think you are precisely right about such a mandate, I think that is exactly what could happen.

Senator BROCK. My time has expired.
Thank you very much.

Chairman RUSCOFF. Senator Nunn?

Senator NUNN. Thank you, Mr. Chairman.

I would like to ask a two-part question about leaks and have both of you, if you would, address yourselves to it.

First of all, what sanctions would you impose on any member of this Congress or any staff member of whatever committee is created actually did leak classified information with the authorization of the committee or the Congress? Following Senator Baker's theory about declassification, what kind of sanctions would you impose? Would they simply be internal discipline sanctions or should they be criminal in nature?

Senator BAKER. My answer, Senator Nunn, to begin with, is that rule 36 of the standing rules of the Senate should apply fully.¹ It provides that in the instance of unauthorized disclosure of classified information, that any employee of the Senate shall be subject to immediate discharge, and in the case of a Member, to expulsion from the body.

I do not believe we have ever used rule 36 as to a Member, but I think that we ought to rethink that rule. It is there and on the books, and it should be utilized, and I think freely.

I really think we should go beyond that, though. I have some trouble in my own mind figuring out how to avoid the Official Secrets Act concept. That concept has such a broad, sweeping, scope that it troubles my constitutional concerns. But there needs to be some sort of criminal sanction against the unauthorized disclosure of information by either a staffer, or by a member, in addition to rule 36, in my view.

Senator NUNN. Thank you.

Senator TOWER. I think maybe in addition to rule 36 which is there and is available to us, that a member could be liable, subsequent to expulsion, to criminal prosecution.

Senator NUNN. Do you think that rule 36 already provides for this? Do we not have any provision in current law?

Senator TOWER. As I recall rule 36, it would not preclude criminal prosecution subsequent to expulsion.

Senator NUNN. There is not any other law on the books?

Senator TOWER. There is a constitutional problem there where a Senator is not held accountable any other place for what he says and does in the Senate.

Senator BAKER. Rule 36 reads: "Any Senator or officer of the Senate who shall disclose secret or confidential business or proceedings of the Senate, shall be liable, if a Senator, to suffer expulsion from the body; if an officer, to dismissal from the service of the Senate and punishment for contempt."

Senator NUNN. If it occurs outside the Chamber, it is one thing. However if a member of the committee who disagreed with the majority view on covert activity disclosed it on the floor of the Senate, he would run into a constitutional question of whether he could be

¹ See letter to Senator Percy from Senator Baker on p. 71.

prosecuted or whether he could be expelled from the Senate because of the protection.

Senator TOWER. I think rule 36 could apply to him if he disclosed something on the Senate floor. It seems to me the Constitution fairly clearly precludes him from being prosecuted for it.

Senator BAKER. I respectfully disagree with my friend.

Senator TOWER. I am not going to argue with the lawyer; I am a nonlawyer.

Senator BAKER. If someone goes on the floor of the Senate and instead of canning a colleague, as has been done—

Senator TOWER. Which probably should be done again.

Senator BAKER. It might be, but I do not want to be the victim or the administrator.

If somebody shot and killed a person on the floor of the Senate, it seems to me that you are stretching the clause to say that you could not prosecute him.

Senator TOWER. The Constitution does not prohibit that, but is prohibits him from being held accountable any other place for what he said on the floor.

Senator BAKER. If he spoke.

Senator NUNN. I have a more practical question which has not been discussed at length. It may have been discussed earlier this morning to some extent. The old pattern of leaks is, of course, has been clandestine or secret leaks. You do not leak information on the floor of the Senate. You find one reporter who will put it in the paper, and who will protect his sources.

As a practical matter, how is a committee to find out—no matter what the sanction is—who leaked the information, whether it is a Senator or a staff person?

I do not suppose anybody is going to start wiretapping Members or staff around here to find out whether they leaked information. We are not going to put them under surveillance.

As a practical matter, are we really whistling in the wind about any punishment at all?

Can you find out who leaked the information? Can it be enforced, or are we just talking theoretically.

Senator TOWER. Some we can find out, some we cannot.

Senator BAKER. I do not think we are whistling in the wind, because then the whole business of passing criminal and civil law is a nullity. I think you have to assume you can enforce it.

Senator TOWER. The existence of stringent legal penalties would serve as a restraint on a Member or staff member who might have the urge to leak information.

Senator NUNN. You both have been through about a year of this situation. Senator Mansfield said there had been no leaks out of the Church-Tower committee.

Senator TOWER. There was one, but fortunately it was not one that had an impact on the security of the country.

Senator NUNN. Could you find out? I am not asking who, I am not even asking what the leak was, but could you find out who leaked the information?

Senator TOWER. No, not yet.

We had every member of the staff sign affidavits, they all signed them, plus every member of the committee signed it.

Senator NUNN. That is my fear. I do not know how you are ever going to find out.

Senator BAKER. I do not think it leaked from the committee.

Senator TOWER. I tend to think it did, but I do not know.

Senator NUNN. Certainly you cannot say that in all of the committees of the Congress somebody is leaking information. Can you agree with that?

Senator BAKER. I think the declassification by leak has become a tradition of Washington. One of the things we should try to do is put in place enough deterrents, enough punishments, and enough legislative history so people understand that we do not want any more of this. That time is over, and I think we can do that. We can never eliminate leaks, but we can certainly diminish their occurrence.

Senator NUNN. Mr. Chairman, may I ask one more brief question of Senator Baker?

You make reference on page 6 of your testimony—I believe you might have stated this in your oral presentation too—to the continuing need for further work by either your committee or the successor of your committee.

In broad terms, what areas need to be explored that have not been covered by your committee?

Senator BAKER. I am not sure I have any particular area in mind.

Let me hasten to say, I do not mean by the present committee. I think the present committee should end. I think it should be terminated at the end of February 1976.

I would rather put it this way. There are so many loose ends in our investigation, so many uncertainties, that I think it would be unfair to prohibit any new committee that was set up from carrying forward. So that it will have that option, I am going to propose that we certify all our efforts, original records and reports to any new committee of the Senate or joint committee that is set up. It can make its own determination.

Senator NUNN. Thank you.

Chairman RUBIOFF. Senator Weicker?

Senator WEICKER. Thank you, Mr. Chairman.

I think what has been touched upon here in the last few minutes is the basic constitutional question that Senator Church referred to in his testimony and the decision that has to be made in this country as to the constitutional right of people to know and participate in their government, and that system which is more efficient and more expeditious.

It seems to me that the explanation that is due right now is an explanation due by the Congress and the President to the American people as to why information was held back. That is why you have the problem on your hands; that is why we do. The extreme secrecy that clouded the actions and withheld this information from the American people resulted in this extreme action.

What is the leak if it involves the illegal behavior of an administration or a Congressman or a Senator, or if it involves the policy of assassination?

Is that a leak, or something that the American people should have known all along, and should have had an opportunity to register up or down?

I can only say this. I think we can all understand that which is classified material, classified in the narrowest definition of that word. Not the Executive privilege that was displayed all over the landscape, but the classification that was put on every single activity of Defense, and everything else; classification in the narrow sense, in the sense of national security.

Really, the problem in Washington has not been an excess of leaks; it has been an excess of secrecy. That is exactly why your committee had to come into being. That is exactly now why we have to respond, hopefully in an intelligent way.

It is clear that the American people will no longer live with an ultra-secret system. They will not have any part of it.

What I do not want to see is to have everything, including the CIA, the FBI, dumped as a response to that extreme secrecy. That is the way I support the type of intelligence oversight that Senator Baker and others have advised here. I would ask the Senator from Texas, do you feel Congress has the right to determine the policies—the policies, not the personnel but the policies—of the CIA?

Senator Tower. Yes, of course. It is a question of exercising that right in a prudent manner.

I believe in the people's right to know, and I think that probably 90 percent of the stuff that is classified could be declassified without hurting anybody. Judgments have to be made, and they have to be made by people who are serving an electorate, directly or indirectly.

To a certain extent, people simply have to trust their public officials because if you let too many people in on the business of determining what will be secret, it will not be secret.

The people's right to know, at some point, has to be subordinated to the people's right to be secure to the extent that an effective intelligence gathering capability can make them secure.

For example, Aviation Weekly published an article revealing the fact that from Turkey we were reading the telemetry on Russian tests. The Russians then started to encrypt their telemetry, so that source was denied to us.

Was the people's right to know superior in this instance to their right to have a confidentially held, secret verification process to defend them against the possibility of a first-strike threat in a nuclear war?

I am using an extreme example here I know, but it is difficult to use any other kind.

Senator Weicker. Some of us very deeply believe that the strength of this Nation is that each one of us motivates himself rather than having someone tell us what it is we are going to do.

The logic of the situation is what motivates us. The fact we do know what they are doing, that motivates us.

I grant to you, as a typical example, your own committee on Armed Services. I am sure that the Armed Forces of the United States could be run more efficiently, more expeditiously, without the Congress being involved. I am sure the Soviet Union armed forces are being run more efficiently in that sense.

Senator TOWER. I do not agree with that. I think they might have been tempted to extravagances.

Senator WEICKER. It is clear that that has been the case.

Again, there too, our oversight really did not come into being in the case of our armed forces except in the last decade or so, where all of a sudden it came to mean something inasfar as the function of armed services.

This is my final question.

You are a man of history. It has been proposed, or has been said, that our basic problem today is that, in order to pursue effectively World War II and stay within constitutional bounds, both the United States and Great Britain in effect had to set up two different governments, one that was public and adhered to the Constitution and another one which was unconstitutional, if you will, but was conceived in order to pursue victory in that conflict. The only difference being, between Great Britain and the United States, that they gave up their second government and went back to the constitutional process and we are still hanging on to remnants of that which had to be devised in order to gain victory in World War II.

Senator TOWER. The nature of our two constitutions are strikingly different. Ours is a written testation; theirs is a constitution based on certain statutes, the Magna Carta, the Constitution of Clarendon, certain customs and usage. They are far more flexible than we are.

They simply suspended the requirement of the parliamentary election every 5 years and formed a National Government.

I think that within the constraints of the Constitution we can conduct a war without engaging in widespread illegal activities.

Senator WEICKER. Is not our intelligence system a hangover from World War II? Is that not one of our problems today in coming into conflict, if you will, with the constitutional precepts of this Nation?

Senator TOWER. I am not sure that I understand the thrust of your question.

Senator WEICKER. In other words, the very measures we have been discussing, the need to know, the openness in the direction of policy, et cetera, obviously none of this took place during World War II.

The question now arises, should it take place now? Should our intelligence and law enforcement agencies be subject to constitutional provisions, or do we sort of set them off?

Senator TOWER. I think they should be subject to constitutional provisions. I do not think they should go beyond the Constitution. We have, of course, disclosed the irregularities and breaches of the Constitution and breaches of law on the part of various agencies, and I think we have properly done so. I do not quarrel with that at all.

Senator WEICKER. I have no further questions.

Chairman RIBICOFF. One final comment, while Senator Weicker is here.

Earlier in this hearing, Senator Weicker made the statement that if Congress did not act this year in setting up the oversight committee, probably nothing would happen in the future.

Am I correct in inferring from your testimony that you feel that there should be no oversight intelligence committee passed in this session of Congress?

Senator TOWER. I originally thought that we should have such a committee. In retrospect, and on examining and analyzing all the elements of it, I have come to the conclusion that we should leave oversight where it currently is.

I would support a resolution that would mandate more effective oversight by those committees that already have that responsibility.

That is where I am at variance with the majority of the committee, and I must say that this is a minority viewpoint.

Senator WEICKER. Would the Senator yield at this point?

Chairman RIBICOFF. Yes, but I would like to carry it further.

Senator WEICKER. On that point, it has to be pointed out that prior to the impeachment inquiry, neither the House nor the Senate Judiciary Committees held any hearings on FBI oversight. The Senate Armed Services Committee in the last 5 years, the numbers are two hearings in 1970, two hearings in 1971 and one in 1972.—Senator Symington claims that no hearing took place. Two in 1973 and 1974. In 1975, the possibility of six or seven.

That is the record.

Why should there be any trust?

Senator TOWER. Why should we not trust these committees? The same people are on these committees that would be on the oversight committee.

Chairman RIBICOFF. We have a problem, Senator Tower.

As Chairman, I come to this set of hearings without any preconceived ideas. I want to act responsibly, and I want to act thoughtfully.

Personally, I believe that this country needs an intelligence community. Personally, I believe that there has to be some covert activity on the part of the intelligence community.

With the Watergate hearings and with the Church committee hearings, I do believe that the entire intelligence community in America today is under a cloud. I think this is tragic. I do not believe that any agency of Government can do an effective job if it does not have the confidence of the Congress and the American people.

I want the intelligence community, the CIA, the FBI and the whole conglomerate to have the confidence of the Congress and the American people.

My feeling is that unless we have a new oversight committee, whether it be a joint congressional committee or a Senate committee, that the intelligence community will be crippled. If you respect the intelligence community and feel that they have a job to do, I feel from my experience as a public servant, that the best thing we can do for the intelligence community is to have a responsible oversight committee. The legislation has to be drafted very carefully.

There are many problems involved. I see them.

I would hope that in the next 8 days, with some 25 witnesses, we would be able to be enlightened to a much greater extent.

I would personally hope that to the extent that you and Senator Baker disagree with Senator Church and the majority that you would give us the benefit of changes and amendments that you would like to see. But my feeling is that we would be making a great mistake, and doing the intelligence community a disservice, if we did not come out with some oversight committee.

Senator BAKER. Mr. Chairman, I think, having gone through the trauma of Watergate, the stress of our intelligence investigation, and the national humiliation that we have at home and abroad, that if we did not go forward now and create a committee of the Congress to give effective oversight and supervision to the intelligence community it would have been a sacrifice for nought.

In justice, and in respect to the intelligence community and for the people of the United States, we must simply do that. It would be a tragedy if we did not.

Senator RUBINOFF. What outrages me is that we have smeared, really, the intelligence community. Because we have an open society, we appear to be the only Nation in the world engaged in these activities.

I am positive with the 40 nations of the world that have clandestine activities and intelligence communities, there is not one that has failed to exceed what has taken place on behalf of the American intelligence community. I am outraged to see published in papers all over the world the list of American intelligence agents, with the same newspapers failing to disclose the KGB and other intelligence agencies.

There is no question that the United States is on the receiving end of an operation to smear this country. Keeping that in mind, I would feel that for the sake of this Nation and for the intelligence community that must exist, this oversight committee will be an absolute necessity.

I would be very much surprised when asking the question of Mr. Colby, Mr. Helms, Mr. McCone, Dean Rusk, Mr. Kissinger, Mr. Phillips, who represents former CIA agents, whether they would not react in the same way.

I would hope, Senator Tower, that you would give very careful consideration to that factor in this Nation today.

Senator TOWER. Mr. Chairman, I do. We agree in substance, I think we disagree in form, what form oversight should take.

We have been remiss; that has been the fault of the Senate, not the committees involved. I think we could mandate them to get on with the job of oversight and require they do it and perhaps report to the Senate periodically.

I would like to emphasize that our committee has been leak proof, for the most part, and that all of the revelations that have been made that have been damaging. I think, to the CIA and the FBI has been the work of the mass media, both in this country and outside this country, and I feel that our committee has functioned responsibly, and I resent the fact that we are being blamed for a lot of the evils that have befallen our intelligence gathering capability.

I might further add that, leaving aside the idea of using the existing committee structure, I would certainly participate in the formulation of a recommendation for an oversight committee, one recommendation that has been incorporated into it is that it be bipartisan in character and to the extent that there be a fixed ratio of five majority members and four minority members.

I think that it is essential that a committee such as this maintain a bipartisan character.

Based on the experience we have had in the select committee that this is the proper way to go, I think this has also been the experience—Howard, correct me—of the Joint Committee on Atomic Energy.

Senator BAKER. Yes, Mr. Chairman, that is correct.

That is embellished by one further point that commends itself to this committee for consideration in view of the sensitivity of the arrangement—that is that the selection of the membership of the Joint Committee on Atomic Energy. I think the membership of the intelligence committee should not be picked by the party caucus. It should be picked by the majority and minority leaders, who would give careful consideration to the members of that committee. That is the way the Joint Committee on Atomic Energy is selected. I think that is the way this one should be done.

Chairman RUBINOFF. May I say only for the purposes of the record that I personally agree that the makeup of the committee should be five majority and four minority. I also would be in favor of the membership being picked by the majority and minority leader.

Thank you very much. We are grateful to both of you for the long hour.

[Further information supplied by Senator Baker follows:]

U.S. SENATE,
Washington, D.C., February 17, 1976.

HON. CHARLES H. PERCY,
Committee on Government Operations,
U.S. Senate, Washington, D.C.

DEAR SENATOR PERCY: I am pleased to further elaborate my views of intelligence oversight legislation currently before the Government Operations Committee and, specifically, of S. 2893, the bill introduced by Senator Church and seven other members of the Senate Select Committee on Intelligence Activities.

As I indicated both during the deliberations of the Select Committee and on the floor of the Senate, I consider two provisions of S. 2893 to be highly undesirable. To be precise, I respectfully recommend to the Government Operations Committee that Section 10 be deleted in its entirety and that Subsections (c) and (d) be stricken from Section 13.

With respect to Section 10, and as I have stated previously, I do not believe that information transmitted from the Executive Branch to the Congress should be disclosed publicly, over the objection of the President, other than by a majority vote of the full Senate, rather than by a determination by a committee upon referral as is provided in Section 10. Rather than the adoption of Section 10, I strongly suggest that Rule XXXVI of the Standing Rules of the Senate be amended so as to clarify that disclosure of classified documentation shall not occur over the objection of the President without leave of the full Senate, as expressed by an affirmative vote of the Senate on the issue of disclosure.

I would strike Subsections (c) and (d) of Section 13 because those provisions are fraught with constitutional and practical difficulty. Notwithstanding my support for effective and vigorous Congressional oversight of the intelligence community, and notwithstanding my belief that the conduct of intelligence activities must become a cooperative undertaking between the coordinate Branches of Government, I find that the provision of prior notice to Congress of clandestine operations, as a condition precedent to such undertakings, is incompatible with the President's constitutional powers to conduct foreign policy and to act as Commander in Chief. This sense of incompatibility becomes especially poignant when required prior notice is coupled with the threat of disclosure, thereby constituting an effective veto power.

As I have often stated, the requirement, provided in Section 13(a), that the oversight committee be "fully and currently informed" enjoys the benefit of over 20 years of precedent dating from the passage of the Atomic Energy Act. This requirement has afforded the Joint Committee on Atomic Energy timely and in-

formed notice of sensitive operations and will provide the new oversight committee with a sufficient mandate to require information of the Executive Branch.

I also am disturbed, albeit less strenuously, by the provision in Section 5 of S. 2893 stating that the current jurisdiction of other Senate committees shall not be repealed or diminished by the provisions of that bill. In my opinion, a new oversight committee can be effective only if it is a single-purpose, primary oversight committee which is solely charged with the important business of intelligence oversight. Furthermore, I sympathize with the complaints of the intelligence community that the Central Intelligence Agency currently is required to brief six Congressional subcommittees on intelligence matters; and I think that the retention of dual or concurrent jurisdictions between the existing committees and the new committee will create an unwieldy and unworkable situation.

While I understand that the Government Operations Committee is required to submit a report on S. 2893 not later than March 1 of this year, I also commend to the Committee during its mark-up sessions the approach adopted in S. 317, the Joint Committee on Intelligence Oversight Act introduced by Senator Lowell Weicker and myself. That legislation, as does S. 2893, provides that the new committee should possess exclusive funding authorization jurisdiction and makes clear that the new committees' authorization and oversight jurisdiction encompasses the national security activities of the Federal Bureau of Investigation, authorities which I consider to be integral elements of coordinated, effective oversight.

Additionally, in defining those "intelligence activities" which are subject to the jurisdiction of the new oversight committee, I suggest that your committee take cognizance of ad hoc intelligence operations, such as the infamous Plumbers Group, so as to make clear that the new committee is to receive full and current information of all intelligence activities, whether or not such activities are conducted by those departments and agencies which fall within the committee's primary jurisdiction.

Finally, while I am disturbed greatly by the recent unauthorized disclosures of intelligence information, and while I fully support strengthening the sanctions against such disclosure by Members of Congress and their staffs, I wish to respectfully submit that the establishment of an effective Congressional oversight capability, and the strengthening of prohibitions against "leaks" are not mutually exclusive. I think it unfortunate that the impetus for effective Congressional oversight of the intelligence community has been somewhat diminished by the irresponsible conduct of a few, and I believe that the recent and contemptible experience of Congress in maintaining the confidentiality of information will be at least partially remedied by the establishment of a formal and responsible committee arrangement for intelligence oversight.

Thank you again for requesting and considering my views.

Yours very truly,

HOWARD H. BAKER, Jr.

Chairman RIBICOFF. The committee will stand adjourned until tomorrow morning at 10 o'clock.

[Whereupon, at 1:30 p.m., the hearings in the above-entitled matter were recessed, to reconvene Thursday, January 22, 1976 at 10 a.m.]

OVERSIGHT OF U.S. GOVERNMENT INTELLIGENCE FUNCTIONS

THURSDAY, JANUARY 22, 1976

U. S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The committee met, pursuant to recess, at 10 a.m. in room 3302, the Dirksen Senate Office Building, Hon. Abraham Ribicoff, chairman of the committee, presiding.

Present: Senators Ribicoff, Glenn, Nunn, Percy, Javits, Weicker, and Brock.

Staff members present: Richard A. Wegman, chief counsel and staff director; Paul Hoff, counsel; Paul Rosenthal, assistant counsel; Marilyn A. Harris, chief clerk, and Elizabeth A. Preast, assistant chief clerk.

Chairman RIBICOFF. The committee will be in order.

We welcome Dean Rusk, former Secretary of State. I consider Dean Rusk a close and intimate friend. Our relationship goes back to 1949 when I served on the House Foreign Affairs Committee. We saw one another out in San Francisco in setting up the Charter of the United Nations.

Of course, we worked very closely together in the administration of President Kennedy, and I could not conceive of these hearings concerning oversight of the intelligence agencies without having the benefit of the long experience and the commonsense of Dean Rusk.

For myself, personally, and the entire committee, I want to thank you for coming up from Georgia to give us the benefit of your views.

TESTIMONY OF DEAN RUSK, FORMER SECRETARY OF STATE

Mr. Rusk. Thank you very much, Mr. Chairman. It is a great pleasure to see you again, and see you looking so well, also my good friend from Illinois, Senator Percy.

I was particularly touched by your suggestion that I come up from Georgia. Usually we are put in another position down there, coming up from Georgia, I suppose.

I thought I might make a few opening remarks, subject to your questions, and make them brief, because I know you have a very intensive schedule and studies ahead of you.

I hope that out of the processes of the Congress in the next period ahead of us will come a thoughtful, comprehensive, piece of legislation revising the National Security Act. I would hope that most of the

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relevant concerns could be dealt with in such legislation so that not only lawyers and judges, people in government, but also the public could get an overview of the entire situation.

I am not sure that 1976 is a vintage year for the long-term legislation because the issues that we face have little to do with the partisanship that is likely to be with us in great quantity this year, and may indeed require a certain time.

Some of the issues will require a very careful constitutional negotiation and consultation between the President and the Congress.

The late, great Chief Justice Earl Warren visited the law school of the University of Georgia shortly before his death. When he was there, he made a remark that struck a responsive chord in me.

He said, if each of the three branches of the Federal Government should pursue its constitutional powers to the end of the trail, then our Government simply could not work. It would freeze up like an engine without oil.

The separation of powers is a very important, fundamental concept in our constitutional system. The other side of that same coin is a constitutional mandate for cooperation among the three branches, and a very careful consultation over a period of time, I suspect, would be required.

Another preliminary remark, and that is that I hope that the Congress will not look at this chart¹ and decide that we have too great a variety of intelligence agencies and that they should be consolidated into a single agency of some sort.

When I was a special assistant to Secretary of War Robert Patterson at the end of World War II, I then supported his view that we should have a single, national intelligence agency, but over the years, I think that I have learned something from experience, at least to the point of valuing very greatly a diversity of sources of information for policy officers of the Government and for the Congress. I think that it is wholesome to have these different agencies who will not create any kind of monopoly on the minds of policy officers with respect to the information.

On the immediate question before you, I do strongly believe that the Congress should establish, as quickly as possible, a Joint Committee on Intelligence. I have not been of this view quite as long as Senator Mansfield, but I have for some time.

In my own mind, as in the minds of others, I see an analogy between such a committee and the Joint Committee on Atomic Energy. I mention that committee, because it has demonstrated that it has the staff and the facilities—should I say the mood and atmosphere—to receive and take care of the most sensitive kinds of information.

I cannot at the moment recall any single instance of any serious leak out of that committee.

My own inclination would be to suggest that this Joint Committee on Intelligence be somewhat larger than is provided for in the bills that I have seen thus far, because there are several major committees of the Congress who have direct responsibility in matters impinging upon these questions. There would be some advantage in having members from the two Foreign Policy Committees, the Armed Services Committees, the Appropriations Committees, perhaps the Judiciary

¹ See pp. 501 and 502.

Committees, although I think this Joint Committee should be something more than just a delegation from other committees.

Such a committee in the first place would facilitate consultation between the legislative and executive branches. It also could be a committee where the issue of confidentiality could be discussed carefully and thoughtfully and dealt with.

We hear a great deal these days about the public's right to know. Most of our constitutional provisions involve some kind of balancing of values in which the public has a stake.

If the public has a right to know, the public also has the right to have its public business conducted in a responsible fashion.

Where to draw the line? It is not an easy line to draw.

We have heard a great deal, particularly lately, about executive privilege. Well, this is not something that attaches only to the executive branch. Surely, the public does not have a right to intrude into the Friday sessions of the U.S. Supreme Court when the Justices sit down and discuss among themselves how they will handle cases.

Surely, the public has no right to know of the conversations which Senators and Congressmen have with their own office staffs, their own administrative assistants, much of the correspondence of the Hill with constituents back home who are seeking their help in one matter or another.

I suggest that the public has an interest in confidentiality in some respects, and where the line is drawn is a matter that needs a good deal of thought.

I would suppose that this Joint Committee would be an appropriate forum to consider the longer range aspects of legislative requirements. Of course, there would be, I assume, joint action within this Joint Committee as well as with any other major committee that is involved in substance, whether it be Foreign Relations, Judiciary, or whatever it might be.

I think that there is a good deal of information that such a joint committee perhaps ought to have if it is willing to receive it. I do not know to what extent information in certain critical fields has been given to the committees of Congress, or whether they indeed have asked for it.

There is a lot of material involved in this issue which those who legislate might wish to have in front of them.

Such a joint committee might decide that it does not want to get into certain kinds of things, for example, the personal identity of individuals who are doing certain things here or abroad. I remember during the 1960's inviting a subcommittee of the Appropriations Committee over to the State Department to have a look at some of the problems in the electronics field with respect to counterintelligence and counter-espionage.

They were, of course, fascinated with what they saw and heard. Afterward, some members of that committee said, I am sorry that you did that, because I would prefer not to know.

In the privacy of such a joint committee, such issues could be readily discussed. Maybe there are a number of other questions that would be addressed.

What I am concerned about is that we not try to play this both ways. If we are not going to use private means for gaining intelligence, then we had better eliminate the effort. There is no particular point in trying to conduct activities beneath the public view and then have those activities made known in whatever form they come to be made known, either out of the executive branch, the legislative branch, a vigorous, inquiring press, whatever it may be.

Unless we can proceed in some respects with genuine confidentiality, then let us make the information service an adjunct to the Library of Congress available to everybody in town and forget the rest of it. I do not recommend it. I think that would be a major setback to our safety and national interests. I do not think we can play it both ways.

Perhaps we ought to make up our minds on that, and decide how we might proceed. Of course, secrecy can be abused, but so can attempts to penetrate secrets and make them public. There is abuse on both sides.

So the Congress should give careful thought to such issues.

On the domestic intelligence side, I think that it might be possible for the Congress to draw a line between the activities of the Federal Bureau of Investigation in relation to ordinary crimes, that is the general range of criminal offenses within the jurisdiction of the Federal Government, and those matters that do relate to the international scene, whether it be espionage, counterespionage, or whatever it might be.

I say that merely because I think I am not sure that a Joint Committee on Intelligence can possibly find the time to cover so wide a spectrum. It might be that the Department of Justice, the FBI, the judiciary committees, might retain a considerable range of oversight with respect to the normal, internal crime-fighting kind of activity.

On the question of in what way such a committee should be kept informed, I think that is something that would need to be discussed very carefully, with the executive branch, particularly with the President and the statutory members of the National Security Council.

I would hope that such careful discussions could reach a common conclusion and that we not have a constitutional confrontation over that particular problem. I must say that I do not know myself of any information which I run across in government which I would be unwilling to see a responsible committee of the Congress have if there were some assurance of confidentiality.

The role of secrecy, I think, has been somewhat exaggerated. Nevertheless, as long as we can talk among ourselves, there is very little that is secret, if anything. The trouble is that when we go public, then there are other vast audiences listening in--our allies, our possible adversaries, many of the Third World, and so forth.

So, I would hope that there could be a very full and very frank exchange. I do not know at the moment which one of you may have served on the Joint Atomic Energy Committee, but I am not aware of any inhibitions that we had in being frank with the Joint Atomic Energy Committee in that very sensitive field.

On the executive side of this problem, if the Congress moves forward with this Joint Committee, I think there are also some things that ought to be done differently in the executive branch of the Government on the same subject.

I look back with a certain amount of chagrin and dismay in retrospect on some of the things which I wish that we had done when I was a statutory member of the National Security Council. For example, I think that those individuals, not their substitutes, those individuals ought to have taken at least a very close look once a year at the budget of the intelligence community and at the manning tables, but we did not do that. The administrative chain ran from the director of the intelligence community to some specially cleared officers at the Bureau of the Budget to the President, then perhaps to Senator Russell, for all I know. I was not clear at any point on how that worked.

My guess is that the members of the National Security Council ought themselves exercise a much higher degree of oversight than in fact was the case when I was a member.

Then, I think that it ought to be made clear by insistence, not necessarily by legislation, that when you have an interdepartmental committee such as the 40 Committee, the 303 Committee, in fact, those committees do indeed look at what is being done, not just consider those items that some one or the other puts in the agenda of that committee. In retrospect, I now find that that was not the case.

It was not a comprehensive review committee.

I think that that is something that needs attention. I do believe that the role of the Attorney General ought to be changed in some respects. I am not in favor of an independent Attorney General, independent Bureau of Investigation.

There has come to be a traditional view that the Secretary of State, the Secretary of Defense, the Secretary of the Treasury, should stand aside from party politics.

Sometimes that erodes a bit, now and again. Nevertheless, that is the general approach on the grounds that the matters dealt with by those three offices should be national and nonpartisan. As a minimum, the Attorney General ought to be moved into that by tradition and by political understanding.

Although I have lived with some Attorneys General who have been very active and lively in partisan politics, I would like to see it generally understood that the chief law officer of the Government would not be in a partisan role and would also be available for continuing advice, if not an actual statutory member of the National Security Council.

I am also concerned about another matter, Mr. Chairman. I may be getting just a little outside of the immediate topic before your committee, but I think it has a bearing.

I am concerned about the arrangements we make for those who exercise what might be called the raw power of the state. In the case of the President, we limit his term of office. In the case of the Joint Chiefs of Staff, we have them serve for a term of office.

I believe very strongly that the Director of the FBI and the Director of the CIA ought to be on a term of office, say 6 years, because we should not let officers who are in an especially critical position with respect to the accumulation and exercise of unchecked or unseen power become so institutionalized that they become virtually untouchable.

Finally, I would just feel that there have been mistakes in the intelligence community, there have been mistakes on the part of those of us

who were supposed to be supervising that community. I would hope that we would not attribute those mistakes to thousands of able, dedicated, honorable, devoted public servants who have served us with extraordinary effectiveness.

Further, one caution about how we score the performance of the intelligence community.

Providence has not given us the ability to pierce the fog of the future with accuracy. I think that it would be unwise for us to score an intelligence community by its ability to predict with certainty what is going to happen.

The Soviets moved into Czechoslovakia on a certain Tuesday night in August 1968. I had some impression afterwards that they had made that decision only 3 or 4 days beforehand.

If we had asked the intelligence community, as we did a week before, as to whether they were going to move into Czechoslovakia, there is no way that the intelligence community could have told us, because the Russians did not know.

We tend to call upon our intelligence community for information which is not present in the real world. This is, in part, a very practical consideration. If we are going to hold the intelligence community to the role of prophet, they are going to flood policy offices with all sorts of predictions; 98 percent never happen at all, and it leaves the policy officer with the job of trying to figure out which ones are likely to be for real and which ones are not.

At best, the intelligence community can be estimators on such things, and I hope we will not impose upon them what might be called the Pearl Harbor syndrome of forcing them to make predictions all over the place, just to have a protective shield in case something goes wrong that they had not anticipated.

There are many questions, Mr. Chairman. In the essence of what you are doing now, I hope that the Congress could create as quickly as possible a joint committee, even though it may require more time for the comprehensive charter-type legislation for a new era for the intelligence community as a whole.

Such a joint committee, for example, could pick up and carry forward any further investigations that might be needed in this field. But to settle down and begin to work seriously and carefully on the longer range problems of the intelligence community and the respective relationships and roles of the executive and legislative branches of the Government.

I think that that is all for now, Mr. Chairman.

Chairman RUBINOFF. Thank you, very much.

I think the decision of the committee to ask you to appear before us is more than justified. Your commonsense and experience is most helpful.

Because we have three important witnesses, and there is a Democratic conference at 12:15 p.m. and a series of votes beginning at 1:30 p.m., I will limit, if we possibly could do so, each member to 5 minutes of questioning. If we have more time, we can spend more time on questions.

Let me ask you, Secretary Rusk, do you think covert operations have a role in our society?

Mr. RUSK. I think that we must have that capability. I think that we should use it with very great discretion.

I could not generalize against covert operations.

When I was a student in Germany and watched Hitler come to power, and can recall at one point he was one of seven men in a beer hall in Munich, I would have been very pleased as a young man had there been a covert capacity in Britain or France or the United States to try to help the prevention of the rise of power of this man, because the failure to prevent that cost something like 50 million lives.

I think it is something that we should not inhale, we should not get drunk on. We should have the capability but use it only where there is great importance in such activity.

May I just add one quick remark?

We looked into some of these matters during the sixties, you will recall, and we found that there were some things that the CIA was doing that could just as well have been done overtly and publicly, say by the Department of State, but the CIA had the money, and the Department of State did not.

For example, there was no reason why the Department of State could not have provided funds for the National Student Association's sending a delegation to international meetings. It may well be that there are certain types of things that we could do just as readily and just as easily overtly if we make some adjustments in the funding arrangements for such purposes.

Chairman RUBICOFF. Given the fact that covert operations do affect a nation's foreign policy, what role do you see for Congress to play in such operations?

Currently we are involved in Angola. It started as a covert operation. If there had been an oversight committee, should the intelligence community have consulted with the oversight committee concerning the advisability of becoming involved in Angola?

Mr. RUSK. If there were a joint committee of the sort that I am describing with the ability and the willingness to receive and take care of sensitive information, I would think that the answer to your question would be yes.

Chairman RUBICOFF. In other words, it could have saved a lot of soul-searching that is going on at the present time?

Mr. RUSK. I think so. I do not know what the conclusion of such a joint committee might have been. In any event, it would have been dealt with at a different level at an earlier time, and we would have avoided some of the anguish of the present public debate on that particular subject.

Chairman RUBICOFF. How do you think that Congress could be assured of receiving proper information and intelligence to do a good oversight job with intelligence agencies?

Mr. RUSK. My guess is that on certain matters our system has been immunized for some time to come against the abuses of process and the lack of good faith on the part of individuals. In the first place, I would make it a responsibility of the statutory members of the National Security Council to see to it that such a joint committee is properly informed.

If you have that understanding and that requirement and then it does not happen, I can assure you from some experience that the lives of such statutory members could be made extremely disagreeable.

My guess is that all of the discussion of the last 2 or 3 years would go a long way toward meeting the problem which you raised. There is no complete guarantee of good faith in any human organization, but my guess is that this would work for quite a long time and I would not advise anybody in the executive branch to cut corners on this, because the penalties could be quite severe.

Chairman RUBICOFF. I have time for one more question.

In the long run, do you believe that our country's position in the world is strengthened or hurt by the fact that we as a democracy seek to make policy decisions openly, after public debate, instead of in secret?

Mr. RUSK. No President, no Congress, can pursue a policy on any matter of major importance for very long without the understanding and support of the American people.

On the other hand, I think since the beginning of our Republic, an element of confidentiality has been acknowledged as necessary for the processes of negotiation. I myself do not believe that we can negotiate agreements or peace in the atmosphere of a football stadium.

I do believe that any agreement or conclusion that commits the United States should be public, and therefore I think there are some processes involved which would be confidential, and that means temporarily confidential, but that the actual public business, the commitments of the American people, should be public.

I think it can work that way.

Senator RUBICOFF. Thank you very much.

Senator PERCY?

Senator PERCY. Mr. Chairman, I would like to join you in welcoming Secretary Rusk. I think this now marks our 18th year of friendship.

I think his contribution to Government, philanthropy and education is a magnificent contribution. You are a great American, and we are proud to have you with us.

I would like to ask you, Secretary Rusk, about this concept of a joint committee.

I originally thought a joint committee would be best, but there is now a growing doubt that the House would really want it. If we draw it up that way, there is doubt that we will get a bill out in a reasonable period of time as it then has to go to the House.

We can reorganize ourselves right here on our own in the Senate so it may well be that it will be one committee coming out of the Senate and may be one out of the House.

The thought has been advanced that there may be a possibility in this unusual case of intelligence oversight to prevent proliferation, as long as it would be a rotating membership after 6 or 8 years, by combining the authorization and the appropriations process so that intelligence matters would not have to go to the Appropriations Committee with 22 members. That is quite a proliferation.

Appropriations would certainly have members on the committee itself.

Does that offer any possibility for trying to keep the number down so that the intelligence community would not be as uneasy about releasing highly sensitive classified information to quite so many people?

Mr. RUSK. Senator, thank you for your personal remarks about me. They are fully reciprocated.

Now that I am a permanent member of the private community, maybe I can tease the Congress a little bit about organizing itself for the conduct of its own business.

Literally every committee of the Congress becomes involved in foreign affairs, ranging from the Senate Foreign Relations Committee to the District of Columbia Committee. It is very hard to find any one of them that does not get involved in one way or the other.

Such a Joint Committee on Intelligence, it seems to me, could provide a comprehensive basis for consultation. I would not myself recommend that the authorization process be on an annual basis. That injects some feeling of instability among those that ought to be career in their orientation.

I would have a careful policy-budget review each year by this Joint Committee.

As to whether there should be a joint committee or a committee in each House, I would hope that if the committees were in each House they would be at least on speaking terms with each other. I would hope they would occasionally meet together, either under the Dome—that happened for a few years—or down at the Smithsonian, which is neutral ground.

There is a problem from the executive branch point of view with regard to the time. I understand that there are eight major committees at the present time that are involved in a significant part of this general problem.

You know, if you are in the executive branch, you must in any event spend an enormous amount of time on this end of Pennsylvania Avenue, but it could become a career, if there is to be full and close and continuing consultation on the wide ranges of things that we are talking about here.

So there is a question of possible convenience in consultation between the executive and legislative branches that tends, perhaps with the bias in my background, tends to make me think more of a joint committee than individual committees.

It could be made to work out, but I have a preference for a joint committee.

Senator PERCY. You mentioned that you felt that the National Security Council should exercise greater oversight. I agree with that.

As Secretary of State and a statutory member of that Council, did you feel that you had and were given all of the information that you should have been given about our covert activities? Did you know everything that the CIA was doing, for instance, that you thought you should have known about?

Mr. RUSK. In the last few years, I have learned some things that I did not know at the time.

Sitting from the vantage point of the year 1976, my answer would have to be no. I must confess at the time that I thought the answer was yes, but it turned out not to be yes, and I feel very badly about that.

I mentioned that we should have personally had an annual review, at least of the budget and manning tables. I think there is something else we should have done.

When a new administration took office in January 1961, we should have taken inventory on what people thought were standing instruc-

tions, so that we could have known, or would have known, what things were dangling there that we at least should have known about, whatever our views on them were. But we did not do that, and I think that this sense of much closer and more personal supervision at that level is appropriate.

I have given some thought as to whether it would be constitutional wisdom for the Congress to try to prescribe that in terms of the internal arrangements for the National Security Council. I think it would be in terms of insisting upon the personal responsibility for supervision of the statutory members.

One analogy that I came across was the fact in the extradition of legislation you put the final judgment on this personally in the hands of the Secretary of State.

I spent a lot of time making the final judgments on extradition cases. I think that you could press for, or insist upon, the personal responsibility of the statutory members of the National Security Council. They would find ways to exercise that responsibility.

Senator PERCY. My time is up and I have one more question that I want to ask, so I will come back later, if I can.

Chairman RUBINOFF. Go ahead, without objection.

Senator PERCY. Thank you very kindly, Mr. Chairman.

There is a philosophical problem we have among members of this committee. Phrases were used yesterday such as "the people's right to know," and "we want the American public to know more and the world to know more of what we are doing," and "that we are a representative Government." I think though there have to be certain things that the representatives of that Government are privileged to that cannot be shared.

Would you care to comment on whether or not everything that this Government knows is the property of the people? Certainly whatever an individual pays to the Government as income tax is a privileged matter between that individual and the Government. It cannot be that everything can be made public and made available.

Would you comment on that from the standpoint of the kinds of activities that we are dealing with here?

Mr. RUSK. I am in no representative capacity, or would pretend to be, but I spent a lifetime out there in the back country, west and south of the Hudson and Potomac rivers.

A lot of citizens are concerned about the very question you raise and wonder whether we are not overdoing some of these slogans we are talking about.

The public's right to know—the State Department spends a great deal of time trying to give assistance to American citizens who get themselves in trouble in a foreign country. That is an activity of a department of government. Sometimes it uses public funds.

Does the public have a right to break through the privacy of those private citizens and find out about all of that activity just because a government agency is involved in it? I would think not. I would think that these private citizens who need assistance have a right to their own privacy.

I think that there are other situations.

I am concerned about getting drunk on some of these phrases.

So there is the public's right to know. As I indicated earlier, it is the public's right to have its public business conducted in a proper fashion. To draw a line there is difficult, but it is a line that is necessary.

Senator PERCY. I thank you. I concur, obviously.

Chairman RIBICOFF. Senator Nunn?

Senator NUNN. Thank you, Mr. Chairman.

Mr. Secretary, I am glad to have you here. I have been in that back country some too, probably some of the same places that you have been, and I think the American public is concerned about a proper balance being drawn.

Senator Weicker said yesterday that we have a way of swinging the pendulum from one extreme to the other extreme in this country, and our job this time is to stop the pendulum in the middle. I wonder whether that can be done in the present atmosphere.

Do you think that this Congress—I think that this committee is capable of it—is capable of coming up with a long-range, rational plan in the kind of atmosphere that we have right now, revealing virtually everything that had been deemed classified in the past?

Mr. RUSK. Senator, down in Georgia we are very proud of our junior Senator from Georgia. I am very glad to see you here this morning.

I commented just before you came in that I was not sure that 1976 was a vintage year to deal with this matter. Our Constitution ordains that every 4 years we go through a turbulent, tempestuous donneybrook while we decide who is going to be President, who will occupy a third of the seats of the Senate and all of the seats of the House of Representatives, plus a lot of other posts around the country.

I would not change that. On the other hand, there is a second reason why 1976 is not a good year and I hope that those involved will understand.

Some of these issues involve very thoughtful and constitutional negotiations in relationships between the President and the Congress. At present, we have a President that is not quite in a normal constitutional position. He is there by the operation of the 25th amendment.

Within a year's time, we will have a President, whoever he is, Republican or Democrat, who will have been elected by the people themselves and there will be a more normal constitutional position.

I would think that the absence of an election year and a more normal constitutional situation would be a better time to try to work out some of these longer range charter kinds of problems that are involved here. I see no reason why we could not go ahead and establish a joint committee right away so that group can get started in thinking about some of these issues.

I do not think that 1976 is the best year for making some of these decisions.

Senator NUNN. You do not think that we should try to solve all of the problems this year? In other words, we should go ahead and try to get some kind of a joint mechanism working so we will have a way for the Congress to relate properly to the intelligence community?

The question I had in mind was, for instance, was prior notice of covert activities. I do not know whether you touched on that matter yet.

Do you think as a matter of law Congress, or some committee of Congress, should be informed prior to a covert activity being undertaken?

Mr. RUSK. If the Congress is prepared or an appropriate instrument of the Congress is prepared to receive such information and take care of it, I would have no great problem with it, but to me, there is an even more difficult problem: That is, that after such advance notification has been given, who makes the decision at the end of the day, the President or the Joint Committee?

That is something that I do not believe can be worked out just in theory. It is something that really has to be worked out, the most careful relationship between a President and the Joint Committee.

Senator NUNN. In other words, the big question is what happens once the committee is informed if it disagrees?

Mr. RUSK. Suppose you have a committee of 19 and 10 of them are opposed and 9 of them are in favor, does that mean that 1 member of that committee, in effect, is in fact the President of the United States for that purpose?

In other words, I think that somehow we have to work out a way toward a conclusion up or down, one way or the other. This is not unusual in our system, and we have had a lot of experience over the years in making adjustments on both ends of Pennsylvania Avenue with problems of that sort, and I would not anticipate that there would be much of a problem on most of the issues.

I gather from the general mood of the country and the Congress that most of the answers are going to be no anyway in this field. Maybe there will not be too much to argue about.

Senator NUNN. I have one other question that does not relate directly to what we are talking about today, but to overall foreign policy. I would not want you to get away without an opportunity to comment, if you would like to.

Most people are not so concerned about whether Congress or the executive is right in instances of Angola or Cyprus and so forth. But there is more and more feeling, I gather, throughout the country, that a combination of the executive and congressional action in the past 18 months—whichever is right and whoever is wrong—has been almost disastrous in the field of foreign policy?

Would you care to comment on that at all? I am really asking what you see as the state of foreign policy as we go into a heated election year.

Mr. RUSK. I think that there has been much too much illusion and euphoria that has built up over this word détente. Détente ought to mean a never-ending and persistent attempt to find points of agreement with those who might be our adversaries, that it is in the interests of both sides, certainly in our own interest, with the recognition that we do not have a new Heaven on Earth, that there are not major differences between us and, say, the Soviet Union, keep our wits about us, negotiate in a clear-eyed, hard-headed fashion, but not move into a period of dreams where we sort of drift back into the general atmosphere of the country when I was a senior in college, an atmosphere that played an enormous contribution toward the arrival of the catastrophe of World War II, and so I think we really are in a period

where we need a new great debate throughout the country on the compass bearings of our foreign policy.

I can understand why people think there should be some significant changes, but we ought to talk this out so we just do not make those changes by drift and inattention and a few slogans.

People of my age are moving out of the picture. These younger people have got to talk these things out and establish their own compass bearings. No generation can do that for another generation, but we are not engaged in that kind of broad debate.

I know Senator Glenn is interested in this point, too. There are committees of Congress in both houses that are concerned about this.

The United States is too big, too powerful, too rich, too influential to allow itself to become unpredictable. Unless we are reasonably predictable to both friends and foes, then we can inject an element of great instability and even danger into the world situation.

That concerns me greatly at the present time.

Senator NUNN. Thank you very much.

Mr. Chairman, my time is up. I would just like to comment that Washington's loss when Dean Rusk left here was Georgia's gain. We are awfully glad to have him in our State. He is a very outstanding member of our academic community there and also one of our real leaders.

He has been a tremendous asset to our State. I am delighted to have a chance to call him my constituent.

Chairman RIBICOFF. Before calling on Senator Brock, I would like to make one comment, Mr. Secretary, on whether 1976 is the year to put this committee in place.

My feeling is that because of the disclosures during the past year, the entire intelligence community of this country is under a cloud. As you know from your long experience in Government, in order for any institution to operate in a democracy, there has to be confidence in it by the people as a whole.

Until we have an oversight committee that confidence will be lacking.

If I were the Director of the CIA or the head of the FBI, I would want to reestablish that element of confidence.

Knowing the makeup of the Government Operations Committee—diverse men, diverse philosophies, who act generally and carefully on a bipartisan basis I am confident that we can bring to bear on the establishment of this legislation the type of thinking that will be free from the swirling currents of the 1976 election campaign.

Judging from just the four men here, I am sure we would have no difficulties in coming together on sound legislation. I do think that it is important for us to put in place, as you said, a committee—it would only have a few months to operate before Congress adjourns early in October. Then there are many complex constitutional questions that would have to be resolved in the succeeding Congress.

Mr. Rusk. Mr. Chairman, I thank you for that remark, because it gives me a chance to clarify what I wanted to say.

I have no problem with an immediate constitution of a joint committee. Its terms of reference might be rather broad in the beginning until it came back and asked us for supplemental or additional legislation.

What I was concerned about was an attempt to revise the entire charter of the National Security Act during 1976. I would be strongly in favor of getting a joint committee together in 1976 or as soon as possible.

Chairman RUBINOFF. Senator Brock?

Senator BROCK. Thank you, Mr. Chairman.

I am glad for that clarification, because that did trouble me, and I agree with the essence of what you said.

I know of few people that have served this country with the integrity, honesty, and ability that you have, sir, and I appreciate the advice that you are giving today.

I am still hung up a little bit on this question of covert activity. I am reluctant to raise it, but I think we are spending too much time talking about covert activity.

Most of our intelligence operation is fairly routine, mechanical work. It does not relate to some exotic, covert operation in Angola or anywhere else. An overwhelming amount of our work is far more mechanical than that—

Mr. RUSK. Right.

Senator BROCK [continuing]. Composed of the effort of historians and economists and agronomists and biologists who use their wisdom to make an analysis of world postures, in order to at least give us some fast judgment of what the greater prospects might be. That is all we can ask of the intelligence community. Maybe we ask too much, and maybe we should realize that limitation.

When we come to this committee, we are going to have to decide in an ad hoc fashion what authority to give to that committee. There is going to be debate over not just prior notice, but in effect a veto privilege for the committee with regard to some operations.

I find again—so you will know where I stand—I think that is a dangerous thing to do. I would like your evaluation of the limits of the committee's authority in this area, if there be any.

Mr. RUSK. Senator, although I strongly favor getting a joint committee in position so it can begin its work, one of my recommendations on it is that I would suggest that it be given a very broad term of reference rather than a specific and detailed term of reference at this point, because such a committee might want to get a lot of information that its members may not now have, it will want to make some judgments over a longer period of time.

For example, such a committee might want to look at this whole so-called covert operations field since World War II. I think that you will find that it is less than many people think it, to begin with. On balance, we would be very reluctant to eliminate the capability.

I think the committee would want to know more about the activities of other governments, in this country and elsewhere, of the intelligence activities of other countries. If that were made public, it could create great feelings of animosity and turbulence among our own people, because some of it is very bad medicine indeed, to take a frank look at what kinds of problems we are up against.

I would personally hope that the issue of veto power would not have to be decided and established in the committee. That requires the most careful and thoughtful discussion between the legislative and execu-

tive branches of the Government. This is a very subtle and sensitive constitutional system that we have.

Senator NUNN. If the gentleman would yield on that point, would it be possible, do you think, for us to frame legislation that would mandate this committee as one of its first duties, to say, study in connection with the executive branch the appropriate kind of relationship on this prior notice for 6 to 12 months?

Mr. RUSK. In recommending any further legislation on the functioning of such a committee, which, in the committee's judgment it considered desirable, but after, but not before, the most careful kind of consultation between the two branches of the Government.

You are dealing with things that go to the very heart of the existence of our Nation and the operation of the most complicated constitutional system in the world. It simply cannot work unless those who are in the Government—I have seen my share of this—spend a considerable amount of time and invest a good deal of mutual regard in making this system work at all, and I would hope that you would not leap to conclusions on such an important issue as, say, a veto power on the part of the Joint Committee.

I think it could be done, Senator.

Senator BROCK. I am tempted toward the approach of my colleague from Tennessee, Howard Baker, yesterday, who said we simply adopt the language of the Joint Committee on Atomic Energy, which gives the committee complete and total and continuing access to such information as it deems necessary. But that in itself, that broad language, does require accommodation of both parties. They have to have confidence that the administration is giving the information. The administration has to know if they do not, they are going to go over and get it.

Mr. RUSK. Also, Senator, the administration—at least my experience with the committee has been that the administration knows with a high degree of confidence that if it gives that committee sensitive information, it is retained as sensitive information.

Senator BROCK. That is the whole essence of it.

The point I was trying to make—and I think the thing that bothers me is that on occasion the Congress has evidence of a tendency of some of its component parts to want authority without responsibility, and that is a very troublesome thing. It is troublesome at the moment with the House, and I am discouraged and disgusted, and I do not want you to comment on that. I raise the point because it does concern me very deeply.

Thank you, Mr. Chairman.

Chairman RIBICOFF. Senator Glenn?

Senator GLENN. Thank you, Mr. Chairman.

Good morning, Mr. Secretary.

One thing that you said a little while ago here really disturbed me somewhat because I think it gets to a very basic point.

We want this oversight function to work. However we set it up, whether it is joint or separate—I favor the joint myself—however we set it up, it cannot just be a facade, a papering over. It really has to have oversight capability, and that is a basic.

Yet your statement a little while ago that you as Secretary of State, conducting our foreign policy, thought at the time that you knew of

all of these activities, but it turns out that you were not privy to some of these things.

It seems to me that wherever the power center is that is making such decisions, that even the Secretary of State was not aware of some of these things, it is that power center, whatever structure or committee we set up has to be getting to and addressing and having the Congress' views taken into account when those decisions are made.

I don't know whose responsible for this situation, Secretary Rusk. I do not know whether this was the CIA running off on their own and making unilateral decisions, was this the Committee of 40? Whatever the group is that makes these decisions, was it NSC, was it solely the President's telling an individual, go do something in a foreign country that might upset your foreign policy that you were trying to design and put into operation?

It seems to me that whatever oversight function that we set up has to get to whatever that power center is, otherwise we are just setting up a facade for the American people that is not going to protect and not get the heart of the covert business that we are also concerned about.

Would you comment on that? I am very concerned that we are missing a basic here, saying we will go to a committee. I do not want us to go to a committee and another level of control in typical Washington fashion, have another agency to solve the problem. I do not think that is the case.

I want to get to how these decisions are made and so we have oversight of the decisionmaking process, whether it be the CIA or whatever—

Mr. Rusk. That is a very important issue indeed.

First, on the committee itself. I hope that the Congress will not approach such a committee as simply adding a ninth committee to eight standing committees already involved in some of these issues.

Unless the Congress is willing to rely strongly upon such a committee, then forget it.

I do believe if such a committee is going to be effective, it has to have members who have the respect of their colleagues in the Congress, and it has to be a committee whose members are willing to spend some real time on it. This is not something you can toss off the back of your hand with maybe an hour a week, or that kind of thing. It is going to require some real time to encompass some real judgments on these matters.

In reference to my own experience in retrospect in not having given a close enough supervision, part of that has to do with this matter of putting the Directors of the FBI and the CIA in a term of office, the institutionalizing of individuals. I once testified to another committee that talking to J. Edgar Hoover during my term was like talking to Charles De Gaulle. He was untouchable. We should not have anybody exercising power who is untouchable in our system.

So I think that there are several things that could be remedied. I cannot imagine that after what has happened and what has become known in the last 2 years that a statutory member of the National Security Council now would be negligent about insuring that he is going to be informed.

When Mr. John McCone became the Director of the CIA, he and I spent a considerable amount of time each weekend talking about his business and some of mine, but it turns out that not even he knew of some of the things that were going on.

So I think that this is a matter that I think is going to be corrected, simply because of what we have been going through for the last couple of years.

Senator GLENN. Was it your feeling that these decisions were being made on a Presidential level, on an executive basis, or was this the CIA going off on their own and doing these things, thinking that it was OK to make these decisions unilaterally?

Mr. RUSK. I am very skeptical of reports saying that President Kennedy or President Johnson used their own private channels to give a lot of instructions in these fields. I would be skeptical and I would be disappointed if I were to learn that were so.

One of the reasons I would make these matters the personal responsibility of the statutory members of the National Security Council would be that it would make it almost impossible for someone in the White House, some staff officer, to pick up the phone and call somebody and say that the President wants you to do thus and so. Those instructions ought to be known to and considered by the statutory members of the National Security Council. There is a great deal of safety in that kind of group consideration on that sort of business, because it potentially could be a very dangerous business.

Senator GLENN. Five minutes goes too fast. This is very interesting and the very basis of what we have to decide here. We have to know where the decisions are being made before we can decide how our oversight functions can fit into it.

Chairman RIBICOFF. That is correct. I agree with you. But now is not the time to shuffle those boxes around and reorganize the entire intelligence community.

I, too, am disturbed by your answer to Senator Percy and Senator Glenn that now you find out that as Secretary of State things went on that you did not know about.

Looking at that box under the National Security Council, would you have a separate individual as Director of Central Intelligence and a different man to be the head of the Central Intelligence Agency so that the Director of Central Intelligence would really be the agent of the President and the National Security Council, and he would not be the same man that would be running the Central Intelligence Agency?

Would that have made a difference?

Mr. RUSK. That would have some advantage in making it more difficult for a Director of the Central Intelligence Agency wearing two hats, to allow the Central Intelligence Agency to exercise, perhaps, an unwanted amount of authority.

On the other hand, I think that there is some advantage and a kind of arms-length relationship, Senator. I am not sure that a person—this Director should be on the White House staff, in effect, in the aura and atmosphere of the President's own most immediate staff.

I have had great respect with both of these individuals, and this next remark is in no sense personal. It is not a good idea, for example,

for the Director of Central Intelligence to be the brother of the Secretary of State. There is something to be said for an arms-length relationship in these matters, and one of the ways to get a degree of arms-length relationship is to put more responsibility personally on the statutory members of the National Security Council.

On balance, I would not object to the suggestion that you made.

Chairman RUBINOFF. The only reason I threw it out, as I listened to your testimony, is that this is about the only way that someone can grab hold of what is going on and administer it.

I was struck, as a member of the Cabinet, that 99 percent of all policy is not made by the President or members of the Cabinet, it is made day by day by people throughout government, throughout the agencies. One of the possibilities in this area is to have somebody who would be the agent of the National Security Council to really be the overseer and the boss of all of these boxes. Then the Secretary of State, the Secretary of Defense, and the President would all know what is going on.

Mr. RUSK. In terms of sheer quantity in the conduct of the day-to-day business, the Secretary of State and the Department of State get far more instructions from the Congress in the operation of statutory law than they get personally from the President as Chief Executive.

Chairman RUBINOFF. Our gratitude to you, Secretary Rusk.

Senator PERCY. I have a further amplification on that one point.

Secretary Rusk, is it not a question of really trying to establish a relationship between the executive and legislative branches that would be different than what we now have in the sense that the people downtown and the people up on the Hill think the others are the enemy.

If you are appearing before a committee as a witness from the executive branch and there is a Presidential candidate there, who is going to control what he says or does?

It seems to me that we have to work toward creating a climate where there can be greater trust between the two branches.

I have heard Members of the Senate say that the CIA has been a magnificent service. They have been a great help. I now know that they have lied to me on occasion.

They probably did so because they felt it was in the national interest and that they had to, because some of these committees are like a sieve. You do not dare release information that way.

Would it not be necessary to possibly impose the same criminal penalties on members of congressional staffs and on Senators and Congressmen if they revealed the kind of information that would call for a criminal penalty on members of the executive branch if they would do it?

Mr. RUSK. Senator, it would practically require a constitutional amendment, in view of the constitutional immunity you have under article I of the Constitution where everything you say in the course of your business down here cannot be questioned in any other place.

The only sanctions you have with regard to the blabbermouth Member of Congress is the vote of censure, removing him from the committee, or if it is bad enough, the most unlikely sanction of all is that you would expel him by a two-thirds vote of your House. That is not likely to happen.

Since you raise the question, I do point out that this congressional and constitutional immunity has to be taken into account in the executive branch when they transmit highly sensitive information. There is no complete guarantee.

In time, as personal relationships develop, you come to know that there are many people down here with whom you can talk in complete candor, provide the most sensitive information and go home and know that that information is as secure with them as it would be with yourself or with your chief deputy.

Senator NUNN. I would like to follow up on that point, because this matter of confidence is very important.

The suggestion has been made that this committee, whether it were joint or a Senate or House committee, be a rotating body. In other words, no member would be permitted to stay on there for more than 6 years.

I see some virtue in that and I also see some danger.

Would you care to comment on that rotating feature?

Mr. RUSK. I would think that it would turn more upon the judgment which you gentlemen—ladies and gentlemen make about the character and the integrity and your confidence in members of the committee. I would hope that that rotation would not be a means for diluting your confidence in such a committee over a period of time.

What is most important is your own confidence in such a committee. Unless you prepare to delegate to them, Senator, then do not go down this trail.

If this Joint Committee cannot be relied upon to handle highly sensitive information that the other Members of Congress will not themselves insist upon, then this is a useless exercise.

Senator NUNN. It seems to me that confidence would change every time that the committee rotates. All it takes is one member to change the complete complement of the committee. That is the disadvantage.

The advantages are obvious also.

Mr. RUSK. You know each other pretty well down here. My guess is that you can find some people that you have complete confidence in.

Senator GLENN. Mr. Chairman?

Chairman RIBICOFF. Senator Glenn.

Senator GLENN. Mr. Chairman, I wonder if the Secretary would be kind enough to answer some additional questions if we submit them to him. I do not want to belabor you, but it would be a big help. I have several lines of questioning that we have not even mentioned this morning, different things. I would hope that you would be able to answer any questions that we might have, and I ask unanimous consent that if we do that that we would include that in the record.

Chairman RIBICOFF. Would you have any objection?

Mr. RUSK. I would be glad to. I do point out that I am now permanently in the world of opinion. You gentlemen have your feet to the fire of responsibility. The old saying that free advice is exactly what you pay for it—

Senator GLENN. It will be like gold if it has been like your comments this morning. You underplay your role in this, whether we are on the firing line or not.

Chairman RIBICOFF. Without objection.

Your testimony has been invaluable, and I extend our gratitude to you.

Our next witness is Nicholas Katzenbach, who has served our Nation in many, many important capacities: as Under Secretary of State and Attorney General. Like Dean Rusk, he is a man of great ability and commonsense whom we welcome this morning.

Mr. Katzenbach, I know you have just come from a plane. You may proceed, sir.

**TESTIMONY OF NICHOLAS deB. KATZENBACH, FORMER ATTORNEY
GENERAL OF THE UNITED STATES**

Mr. KATZENBACH. Thank you very much.

I have a short statement, and it may be useful to read it.

At least it states my biases.

Mr. Chairman and members of the committee, I appreciate the opportunity to testify this morning at the invitation of the committee. I should say at the outset that I claim no great expertise on the difficult subject which the committee is considering. Many members of the committee have far more experience in government than I, and the distinguished chairman has a particularly broad and virtually unique background, having viewed problems from the standpoint of State executive, Cabinet member, and member of this distinguished body.

Perhaps I should state at the outset the bias which I bring to this problem. I believe in a strong Executive and it seems to me that today, especially with respect to the matters of concern to this committee this morning, the Executive must have substantial discretion.

I also believe in a responsible Executive and strongly hope that the measures adopted by the committee will not serve to diffuse that responsibility. Responsibility is the cornerstone of accountability and I strongly believe that the President and his Cabinet officers and advisers should be held accountable to the Congress and to the public for their conduct in office.

Let me be clear that I do not think the Executive should operate in an uncontrolled fashion, and I do think that the Congress has extremely important responsibilities and duties to insure that that is not the case. I think it is fair to state that in the areas of interest to this committee, the Congress has not in the past performed its role through legislation or through investigation, as well as it might have done. And I take it that the objective of this committee is to cure that situation for the future.

That objective is to be welcomed. Indeed, I see no way of restoring public confidence in our intelligence agencies without the establishment of a far stronger congressional control than has existed in the past, and I am inclined to the view that a special oversight committee is today the appropriate way to accomplish that.

But, as this committee knows, that is a very difficult task indeed.

There are, I believe, three fundamental problems which have to be resolved in some fashion:

First: There is the problem that the activities to be overseen depend for their success upon secrecy. It is extraordinarily difficult for our open society and open legislative process to cope with that fact.

Indeed, the concept of secret activities is inimicable to our political system. And surely we have seen enough by way of abuse to be skeptical of any form of self control on the part of the Executive. On the other hand, while members of Congress have certainly proven that they are capable of keeping secrets, they often fail to do so when they question the wisdom of a particular activity.

Second: In my judgment there is a very real problem stemming from the fact that there is no real consensus in the Congress or with the public with respect to the activities of intelligence agencies at home or abroad. We have today no real consensus with respect to our foreign policy objectives, let alone how they should be pursued. And there is considerable division of opinion in and out of the Congress with respect to the tension between legitimate activities of law enforcement agencies and right of privacy.

Third: It is extremely difficult to legislate in these areas, except, perhaps, at the extremes. If I am correct in this belief, it means one of two things: Either the Executive must be given considerable discretion, or the Congress through an oversight committee will be tempted to substitute itself for the Executive in ways in which it should not, and which may even raise constitutional problems.

I believe that there should be a joint committee of the Congress to perform an oversight function with respect to intelligence activities. I have more reservations about the need for such a committee with respect to domestic investigations by law enforcement agencies. But I do see some virtue in attempting to carve out that piece of such activities that relate to so-called national security matters where the purpose of the investigation is intelligence and not prosecution. My problem is that that is a difficult line to draw within the executive, and, I suspect, within the Congress as well.

I believe that such an oversight committee should have both legislative and budgetary responsibilities as well as performing an oversight function. I think the Congress should consider what activities, such as assassination attempts, it should prohibit by law. I think it should seriously consider a moratorium on covert activities abroad designed to influence political judgments, although I think the line between such activities is an extremely difficult one to draw. I suspect that the reporting requirements in existing legislation with respect to such activities amount to making it impossible for the executive to pursue such activities. My reason for suggesting a moratorium is that I simply do not believe that we can focus attention on activities of that kind until we have achieved a better consensus than we have today with respect to our foreign policy objectives and with respect to the means by which they should be accomplished.

I believe the committee should appropriately review guidelines with respect to intelligence gathering. I do not think the committee should be involved in formal or informal approval or disapproval of current activities.

But I think the Congress should mandate the executive to maintain a written record of all covert activities of whatever nature: The justification of such activities; the approval of the head of the agency for the activity; and, an assessment of the success or failure of each particular activity.

This should be reviewed by the committee some period of time after the fact. I believe that kind of procedure imposes a discipline upon the executive which would go far toward resolving the problems of control.

I mentioned budgetary activities, because I believe that in the intelligence gathering process, the enormous difficulties in evaluating the worth of intelligence and its quality are likely to be beyond the competence of a committee and its staff.

Here I believe the only effective control is a justification of a budget.

In conclusion, I would only like to make two comments.

It was my experience in Government that the objectivity and quality of the intelligence provided by the CIA was extraordinary.

Similarly, the ability of the Federal Bureau of Investigation of the highest quality.

Clearly, abuses crept into both organizations, but I have the feeling that public attention with respect to those abuses may have obscured the quality and dedication of the personnel of those two organizations.

My hope would be that the establishment of an appropriate congressional oversight committee could go a long way toward reassuring the public without further impairment of the effectiveness of the agencies.

Thank you, Mr. Chairman.

Chairman RUBIOFF. Thank you very much, Mr. Katzenbach.

I wonder if you have had the same experience as Secretary Rusk who stated before you came into the room that he was rather surprised to find in recent years that there were activities going on during his term of office of which he was not aware.

Did that happen in your case too?

Mr. KATZENBACH. Yes, it did.

Chairman RUBIOFF. Congress aside, how do you assure that the Attorney General and members of the National Security Council, as well as the President, are aware of major activities of intelligence agencies?

Mr. KATZENBACH. I think that is extraordinarily difficult, if you have within a department or within an agency a series of principalities, the heads of whom have their own congressional and public constituents. I do not think that there is any way for a head of an agency to know what is going on in his agency unless that flows to him because of the loyalty and the sense of responsibility that people down the line have.

You ran, Mr. Chairman, an agency that had a lot of principalities in it.

Chairman RUBIOFF. It sure did, and has more now.

Mr. KATZENBACH. I think it is extremely difficult for the Cabinet officer involved to be known by subordinates that he would not approve of certain activities. It is extremely difficult for them to go to him. The press is extremely important in this respect.

Chairman RUBIOFF. We have been talking about oversight in the congressional branch. It seems to me from just this morning that there would be need for oversight in the executive branch as well.

It is not my intention to try to shuffle all those boxes around and in this legislation reorganize the entire intelligence community. Do you

think that the President and the National Security Council would be better informed if the Director of Central Intelligence were a different individual than the head of the Central Intelligence Agency so that he, at least, would have in the executive branch, oversight of all of these vast intelligence-gathering agencies and his basic responsibility would be to the President and the National Security Council? Would that help in any way?

Mr. KATZENBACH. I do not know, Mr. Chairman. I have not really thought about that particular proposal.

Chairman RIBICOFF. At the present time it is true, is it not, that the head of the Central Intelligence Agency is also the Director of Central Intelligence?

Mr. KATZENBACH. Yes.

The only problem that I have in splitting that is what kind of tensions do you get between the two?

Chairman RIBICOFF. Of course, the only tensions you would get is that the President is the boss of both of them in the executive branch. There would be that responsibility to make sure in the future that the President of the United States and the Secretaries of State and Defense do not wake up one day to find out that a major operation has taken place of which they have been ignorant.

Mr. KATZENBACH. I think part of my hesitation is that I think that the operating head of an agency has a better capacity and a better sense to know what is going on within his agency. Now, beyond that, you raise the question of how do other interested decisionmakers, consumers of the intelligence, get informed about it?

You can do that through the National Security Council mechanism. The difficulty with that is in any large bureaucracy, the heads of all of those agencies are extremely busy people and frequently some deputies and assistants do not do their homework in an area where they do not have the operating responsibility.

Chairman RIBICOFF. The reason that I raise that point is that from my experience as a judge with criminal jurisdiction, and as a Governor of a State I was always amazed at the rivalry and the jealousy between local police officers, State police and the FBI. It was really competitive. I am sure Senator Javits, as attorney general in New York, noted that.

After all, you have all of these various intelligence-gathering agencies. Historically, philosophically, there is rivalry and jealousy between all of them. But here the Director of Central Intelligence, who really has the best access to the National Security Council and the President, is also the head of the Central Intelligence Agency. It puts the Central Intelligence Agency in a preeminent position, because the man who heads that Agency is also the Director of Central Intelligence who is probably in the position to make the final decision, which will go to the National Security Council and the President.

I just raise the point. I had not thought of it before the testimony of Dean Rusk and yourself today.

Mr. KATZENBACH. I think it is certainly a possibility that should be seriously considered. I think that some competition among the intelligence agencies, even with a certain amount of redundancy is probably a good thing in trying to work out the various possibilities and

to have different views about what it is that might occur, and have different opinions about it.

It seems to me to be a healthy thing.

Chairman RUBINOFF. Is there any excuse for the Secretary of State not being aware of an operation that affects the foreign policy of the United States of America?

Mr. KATZENBACH. No; I really cannot think of any. Certainly it is no excuse for the President of the United States not to know about it.

Chairman RUBINOFF. I have one more question that I would like to ask. My 5 minutes are up.

Do you think the Congress should be briefed in advance or simultaneously with the undertaking of intelligence operations?

Let me give you two examples. Let us take Angola or the Glomar project that cost \$250 million. Take those two incidents.

What should be the relationship between that type of an operation with the Congress of the United States?

Mr. KATZENBACH. I think that today, as I said in my statement, you have so much difference of opinion in the Congress and difference of opinion in the public that I think that a briefing of any substantial numbers of Congress will result in a leak to the press. I think that does much more damage than not carrying out, or even contemplating, the operation at all, which is why I would suggest—although I think there is some loss involved in it, certainly some potential loss, even—at least a moratorium on any such activities so that the general public and the Congress does not focus its attention on that and spend some time really focusing some attention on what our role in the world is and how we ought to carry it out.

Chairman RUBINOFF. Senator Percy.

Senator PERCY. Thank you, Mr. Chairman.

We certainly welcome Mr. Katzenbach here today with his fine background and knowledge.

On page 4 of your testimony, you indicated that the oversight committee should have both legislative and budgetary responsibilities. By budgetary, do you mean appropriations approval?

Mr. KATZENBACH. I think it should review and approve the budget, because I think that in many of your intelligence agencies, the budgets are huge. It seems to me the only way you can measure the value of that is to make the Agency justify, not just its activities, but the cost of those activities against the product.

Senator PERCY. I orbited that idea yesterday for thought. You are the first witness who has come in with a prepared statement on it, and I welcome it.

I am not positive I am for it, but it may solve the proliferation problem for us. At least it is something that this committee should consider. I am delighted to have you comment on it.

You clearly say that you do not think the committee should be involved in formal or informal approval or disapproval of current activities. How quickly do you think that the committee should have information as to a covert activity having been carried out? Immediately after it has been completed so that there is no possibility of a leak?

At what stage?

Mr. KATZENBACH. I would think that you ought to review the guidelines beforehand. Then, I think you ought to have a very thorough paper record which you would require by law to be kept. Then I think it would be a period. I would say a couple of years afterward.

Senator PERCY. Would you say that the committee should be well-enough informed so that if something was carried on and they found out about it 7 years later that they should not be surprised that that kind of activity had been carried out because the guidelines had been sufficiently detailed when they laid that policy down?

Mr. KATZENBACH. Yes, Senator; it would be at least my experience, if you are forced to put down in writing what the operation is, what it is intended to accomplish and the justification of it in some detail, and then a review of it afterward and the head of the Agency, or indeed the National Security Council members, are forced to sign off on that disapproving or approving, that itself has the effect of giving much more serious consideration.

Senator PERCY. Would that not just alter completely the present procedures of the CIA? I would think that it would almost be impossible for them to commit everything that goes on to writing.

On page 5, your suggestion may correct a lot of the abuses.

Mr. KATZENBACH. I think the high officials of the Government from the President on down to the heads of agencies are concerned, while they are in office, as to how their office is going to be viewed in future times, and I think creating that kind of a record inhibits questionable activities.

Senator PERCY. The Central Intelligence Agency has a very large budget and large amounts of cash are actually used to pay off informants and so forth.

Mr. KATZENBACH. I think in sum total, quite large amounts of cash.

Senator PERCY. Do you think there are adequate auditing procedures, considering the large amounts of cash involved? Is this something that from a procedural standpoint we should look at?

I do not think GAO has access to those records, for instance. The Comptroller General of the United States cannot get information. When I requested a study they were simply barred from getting certain information, even about the number of people involved in certain kinds of activities.

Do you think in our oversight responsibility, we should try to get a handle on some of this and set up procedures that would be much more controllable?

Mr. KATZENBACH. I think you should be satisfied with the auditing procedure, although I have no reason to believe that the Agency has not itself recognized the problem involved in handling cash.

I would just suspect it has procedures at least designed to avoid the problem of someone pocketing half of them.

Senator PERCY. While you were the Attorney General and had the FBI under you, and the Director of the FBI, presumably, reporting directly to you, did you have trouble getting information from the FBI?

Did you have the feeling that they kept information from you as Attorney General?

Mr. KATZENBACH. It is clear that they kept information from me as Attorney General. The FBI floods the Attorney General with

memorandums every day, at least two-thirds of which, during my time, were not worth reading.

I think that the problem there, if you asked a question, you got an answer. Whether the answer was correct or not, you had no means of knowing because you had no means of getting into any of the Bureau's files or records. Of course, Mr. Hoover kept a very, very strong control over the agents and the Bureau, so that there was no possibility, really, of any agent telling a lawyer in the Justice Department or getting to the Attorney General anything Mr. Hoover did not want. It was his job if that occurred.

Senator PERCY. Finally, do you have any views as to the practice that has now been adopted of House and Senate committees or subcommittees unilaterally deciding to release previously highly classified information on their own authority?

Mr. KATZENBACH. I am not particularly happy that they do it, but I really do not question the ability of a committee of the Congress any more than a Member of Congress, if that is something that he chooses to do in the legislative process, I believe that he can do it.

Senator PERCY. Thank you very much.

Chairman RIBICOFF. Senator Nunn.

Senator NUNN. Thank you, Mr. Chairman.

Just a couple of questions on the moratorium on covert activities. Mr. Katzenbach. Are you speaking of covert political activities and covert intelligence activities, or just one?

Mr. KATZENBACH. The political activities.

I repeat what I said: it is not easy in all circumstances to make the distinction between the two of them.

Senator NUNN. What you are saying basically is the planning of the covert activity—the briefing of six committees and the leaks about that activity—is much worse than if we had planned the activity at all. Without getting any of the benefit of it, we are getting all the blame from it.

That is where we are right now.

Mr. KATZENBACH. I think that is true. As a part of that, and a further extension of it, as long as any covert activity is going on, the Agency in the United States is going to be blamed for everything that goes on.

Senator NUNN. I am comforted by the fact that I do not think anything that we would do in creating a joint committee or a Senate committee could be worse than the status quo.

Mr. KATZENBACH. I sympathize with the Senator, but I do not want to underestimate the committee in any way.

Senator NUNN. What do you see after the moratorium in terms of covert activity?

Let us say that some kind of consensus emerges. What kind of consensus would you like to see about covert activity?

You already have said, I believe, that you do not think that Congress should receive advance notice a written record of those activities.

Mr. KATZENBACH. I think most covert activities ought to be abandoned permanently. I think there are some covert activities, primarily in terms of funding, in societies where there is some possibility of that society becoming more liberal, more democratic, some possibility for some precedent, some criticism of that kind.

I think that the funding of a newspaper helping some form of more democratic process, even perhaps in some circumstances funding parts of political activities, of electoral activities.

I am not as offended by that as some, if it is moving the society in that direction.

I think support to labor unions in some countries, to try to get a labor movement going is good from our foreign policy point of view. We are far better off in this world if other societies had some of the conflict, some of the freedom of speech and freedom of political activities, that we would be a far safer world.

To the extent that that can be encouraged—it would have to be encouraged by a modest amount of covert funds.

Senator NUNN. One other question.

Moving from the practical to the theoretical for a moment, what do you see as the constitutional relationships at stake here? What constitutional revisions, as a lawyer, come into play in the deliberation? The role of the Congress advising and consenting in the area of foreign policy, I suppose, is one.

Mr. KATZENBACH. The only one that I am concerned about is the delegation of formal authority to committees of Congress to really act for the Congress, which I do think raises very serious Constitutional problems.

I think that as a matter—

Senator NUNN. Would you amplify that? The delegation of Congressional authority—

Mr. KATZENBACH. I do not think that a committee of Congress should have the authority to approve or disapprove a particular act of the executive. I think that that role belongs to the Congress as a whole, and I do not think it is delegatable to a part of it, in my view of the Constitution.

Apart from that, which is the concern that I had here, I think that the Congress, the way I view the Constitution, the Congress has enormous power and the executive has very, very little other than what the executive gets from the Congress through the legislative process, through the appropriations process.

I think that the Congress can do about anything that it wants to do in a legislative fashion. It is an extremely broad power, a broader power than in many instances can be practically used, since there is a great deal of delegation to the President, to the executive.

Senator NUNN. Thank you.

Chairman RIBICOFF. Senator Javits?

Senator JAVITS. Thank you, Mr. Chairman.

Mr. Katzenbach, we welcome you to an old place for you, and I see that Dean Rusk was here. I was not able to be here. I was marking up an education bill.

I ask unanimous consent that the prepared statement¹ that I would have made at the opening of the hearings may be inserted.

Chairman RIBICOFF. Without objection, so ordered.

Senator JAVITS. I am very interested in your view on a moratorium on covert activities. That is, that we cannot run the affairs of the world unless we are going to say we are going to have no covert activi-

¹ See p. 104.

ties, so that we may not need them before your moratorium would expire. What about that?

Mr. KATZENBACH. I believe today if you said no covert activities designed to affect political purposes abroad, that the country could live with that.

There would be some loss in some situations. I cannot see any major loss out of that. There would be some gain simply in not doing it and reassuring the American people, and I think reassuring people abroad.

I think it should be seriously considered.

The moratorium is something that accomplishes that for a period of time, and then permits the problem to be reconsidered perhaps in some calmer circumstances than today.

Senator JAVITS. So we find. I think it is quite a different proposal.

In other words, you would not have your suggestion applied to intelligence gathering?

Mr. KATZENBACH. No, sir, I would not.

I repeat again: The line between intelligence gathering and influencing political activity is not an easy one to draw.

Senator JAVITS. I agree.

Nonetheless, you would not—

Mr. KATZENBACH. I would not.

Senator JAVITS. I think that makes it certainly much more engaging to me as a suggestion.

The other thing that I would like to ask you is this. It seems to me, in examining the whole intelligence picture, that we do not give enough emphasis to something that has been raised—Senator Percy has raised it, others have raised it: What about intelligence that we are entitled to? We have no intelligence-gathering activity.

We are the people who make laws, and we just stopped the United States from doing what it wanted to, according to the President, in Angola and we had a lot to do with pulling him out of Vietnam.

We need to know something about intelligence ourselves. We have no way to do it, except from the intelligence community.

Hence, question: Do you believe that the laws that we are considering adequately provide for that problem? I rather do not, and I would appreciate any suggestion.

How do we get there? Not just supervise what intelligence is being gathered for the benefit of the President, Army, Navy, Air Force, et cetera?

How do we give ourselves a source of intelligence upon which we can rely which can be disseminated among us enough to make it a working tool so that we may legislate.

That is point 1.

Point 2, assuming that, how do we give ourselves the means to determine what we will release to the country so that the country might be persuaded. We cannot just leave that to the President, or even tie our hands that we will not do it if the National Security Council, or some other agency or some individual who classified the documented secret.

We tell the executive that we do not think it is secret, and he says, I am sorry, I do.

Then what?

It seems to me that those are two questions that we have to wrestle with on this matter.

Mr. KATZENBACH. Let me say that there is no question about the fact that masses of paper are classified within the Government far too high from the classification point of view.

In fact, I always thought, if you want to keep something secret, you would not classify it, and nobody would then bother to read it.

As far as the intelligence is concerned, I think I am really in disagreement with you, in a sense, Senator. I really do not believe that in terms of the broad foreign policy lines the understanding of what our role is and basically how it should be carried out for the Congress to perform its functions, requires a kind of detailed intelligence that we gather for execution of that policy.

I also think that if we are gathering good intelligence, and I think we are—at least I think we were, and I think we still do—I think that at least the presentation of the conclusions of that, which is done in connection with legislation, ought to be sufficient, from the congressional point of view—there is no President, no Secretary of State, no Secretary of Defense who has an interest in having anything but good intelligence. He wants the most objective views that he can get.

Indeed, that is in part why we have multiple intelligence agencies within the Government, so that if there is disagreement about that, that can be brought to his attention, and indeed, I would think on important matters, ought to be brought to the attention of the President.

Senator JAVITS. Mr. Katzenbach, that is something that you and I do not agree on. After Watergate, Vietnam, and a few other things, I am not prepared to accept the conclusions of the intelligence gatherers, which is often designed to induce us to adopt the policies which they are recommending, and I want to know the barebones of the two.

I might have a very different opinion.

So in my judgment, and I value very much your contribution and respect you enormously—I think that is a big problem for us.

Mr. KATZENBACH. It always concerns me to be in disagreement with you.

Senator JAVITS. I respect you greatly, as you know, and I value your testimony.

I do think this is one we have to wrestle with.

I would like to ask one other question in that connection. This oversight committee, which I think would be designed—I like very much, Senator Percy, the rotating aspect of it.

Do you think that that might be a suitable committee if it were a point of entry and exit for intelligence information? In other words, whether we should extend its authority to determine whether or not a collective sense of responsibility will allow or not allow certain types of intelligence to be released as an element of the public's consideration of a given bill or policy that we wish to announce, and here in the Congress adopt?

Do you think that committee might also have a role in that so that we have a greater collective sense of responsibility than just leaving it to the constitutional provisions of our privileges? We have had some instances of that, and I know my colleagues are as worried about it

as I am, that we are going to have some very serious disciplinary problems. The more we know, and the more we have a right to know.

I just offer that to you for your comment.

Mr. KATZENBACH. I think that is a very useful suggestion as far as internally in the Congress controlling things are concerned.

The problem that I see with leaks of information from the Congress is not the fact that Senators and Congressmen cannot be trusted to keep secrets. It is the fact that they are simply opposed to the policy very strongly and any information that they get that would strengthen that policy position of theirs, they find it much more difficult to keep secret.

In other words, if you really strongly believe that there should be no covert activities in Angola at all, it is a great temptation to effectively destroy those activities by making them publicly known.

Senator JAVITS. Thank you, Mr. Chairman.

Chairman RIBICOFF. Senator Glenn?

Senator GLENN. Thank you, Mr. Chairman.

Mr. Katzenbach, I was disturbed as you know—I think you were in the room—awhile ago when Secretary Rusk was here about the fact that even the Secretary of State was not necessarily apprised of everything that was going on. Some of these activities, covert, I presume, that could possibly have altered the whole course of what he was trying to do as Secretary of State, yet these decisions were being made by someone else. It seems to me that before we really decide—let me back up.

Yesterday, I was more concerned during the testimony here and in the questioning whether we should set up a joint or single committee, whether we have not only budgetary authority, but appropriating authority given also to this committee, so that we do not proliferate the number of people involved, that we kept the confidentiality of this thing very close. Much should be secret.

I was thinking about this this morning. Maybe there is something very basic that we have to decide before that.

What are we going to oversee, No. 1?

Who are we going to contact? Are we to get down into every little file someplace? Is this to be a main interface, to use an overused word—is this an interface with the NSC, as Secretary Rusk has proposed as the authoritative group we would be dealing with, or should it be with the CIA?

It seems to me whether we structure this as a single committee or a dual committee in the Congress or whatever we do may well depend on what function we are going to oversee.

I guess my question, No. 1, is what group in the executive branch do you think should be responsible for running these activities?

Should it be the NSC or the CIA?

Mr. KATZENBACH. If the committee is to oversee intelligence activities, it should be overseeing the agencies that carry them out.

I have a problem with the FBI until they get recognized in the executive branch, I do not know how the committee covers the domestic aspects of this, that, unless it becomes either a separate part of the Department of Justice, or something of that kind—I really have not thought that part of it through—I would think that you would simply be overseeing the activities of the agencies that gather, collect, and dis-

seminate intelligence and the agency or agencies that take actions designed to influence political activities.

Senator GLENN. You think an oversight committee should go directly to the FBI, CIA, and NSA?

Should it be the CIA coordinating all these activities and us having one central reference point and making them responsible for everything, or for keeping us informed of everything going on?

Mr. KATZENBACH. I am inclined to think it should be separate agencies. The only reason I say that, Senator, if there is value to having separate agencies, then the committee should not take action which puts particular power in the hands of the Director of the Central Intelligence Agency.

Senator GLENN. Have you had an experience similar to the one Secretary Rusk described where you were involved in things, and yet there were overt or covert things going on of which you should have been apprised and were not?

Mr. KATZENBACH. Yes; I believe. Of course, when I was in the Department of State, I probably thought that he knew.

Senator GLENN. Thank you, very much.

Chairman RIBICOFF. Senator Percy?

Senator PERCY. Mr. Chairman, in view of the vote that we have at 1:30 today, Secretary Rusk has thought that we could improve our procedure if the members of the National Security Council would exercise their responsibilities with greater diligence, and we think we should also. We are going to try to do that.

It could well be though that when we have only six statutory members including the President and Vice President on the National Security Council, and in the Cabinet, the Secretary of the State and Secretary of Defense, that it could well be that the Director of the CIA, if someone put his "cotton-pickin" hands too deep into his business, he serves on that committee at the sufferance of the President generally. He could just feel that he could be intimidated and taken off.

Would it be better to have more Cabinet members—for instance, is there one or two other additional ones that should be made statutory members so they feel they could still be removed as a Cabinet member, they still feel that they have a built-in responsibility in law for that appointment that they carry and specifically I am thinking of a vote today at 1:30 to override the President's veto on the Secretary of the Treasury, who is not a statutory member, in spite of his vast responsibilities, possibly the Attorney General.

I think I would feel more comfortable if the Attorney General felt that he had a real responsibility in law serving on the National Security Council.

Mr. KATZENBACH. I do not really know how to answer the question. I am skeptical with respect to two things.

The first one is, I have already made the point you are talking about, extremely busy people whose main focus of activity and major responsibility at any given time are not in this area, and therefore whether they really would feel the sense of responsibility that you contemplate that they ought to feel, I have some query about.

Second, not all of those people have the resource within their agencies to be as well informed as others, so it would seem to me unless—to use the Secretary of the Treasury as an example—unless

this was a matter that really involved his Department, his responsibility, and his interests, he is not going to know very much about it.

Senator PERCY. Thank you.

Chairman RIBICOFF. Thank you very much for your valuable contribution.

[The prepared statement of Senator Javits follows:]

PREPARED STATEMENT OF HON. JACOB K. JAVITS, A U.S. SENATOR FROM THE
STATE OF NEW YORK

Mr. Chairman, the hearings which we begin this morning deal with legislation which will resolve issues of far reaching importance to the people, to Congress and to the Executive. For more than twenty-five years the question of what constitutes appropriate congressional oversight of the U.S. intelligence community has been debated. This debate has taken on a new meaning and particular urgency during the past year as a result of the work of the select committees in the Senate and the House in examining the operations of these agencies.

While a series of serious abuses of executive power have been documented in the course of these efforts, it should not be the purpose of our hearings to replough the ground which has been thoroughly and ably explored by those Committees. Our responsibility is to act on the findings of our colleagues and establish a more realistic and effective system of congressional oversight in this field.

In my view, the maintenance of a superior intelligence capability is a fundamental requirement of U.S. national security. And this can be made entirely consistent with safeguards, against the extraordinary abuses of power involving violations of the constitutional rights of U.S. citizens in these activities which have been disclosed. There is an immediate need for Congress to define more clearly our intelligence requirements and to draw up workable guidelines for intelligence activities. Therefore, the central question before this Committee is how to obtain a workable balance between secrecy and oversight in devising a strengthened and more effective mechanism for that purpose. Congress must examine its own institutional strengths and weaknesses, and its own constitutional role in foreign affairs with reference to the Executive.

Some may contend that the President's powers under Article I of the Constitution as Commander and Chief preclude any new or enlarged role for Congress in monitoring the broad policy directions of these agencies. There is no doubt that intelligence is an executive function of government requiring decisions and administrative action which are properly assigned to the President and by him to the National Security Council. However, the argument that the Constitution prohibits a process of congressional policy review and policy critique on a timely basis to support its legislative and appropriating authority would deny to the representatives of the people the opportunity for positive and imaginative oversight of these activities. I look forward to the testimony of Administration and other witnesses on this point.

Another related issue which must be squarely faced is the question of protecting the confidentiality of sensitive, national security information which many members feel must be made available to a new oversight committee under procedures which are acceptable both to the Congress and to the Executive. On this difficult question, we must find a way to duplicate the effective and workable procedures which were enacted under the War Powers Resolution of 1973.

Mr. Chairman, the public concern over the covert activities of the CIA must not obscure the need to face other equally important problems within the U.S. intelligence community. With a total budget in the foreign intelligence field of almost \$6 billion annually these activities can impact adversely upon American foreign policy, can violate the constitutional rights of U.S. citizens and can cause the misuse of intelligence estimates by some who would mislead the people.

One of the first obligations of any new oversight committee would be to inquire generally into the nature and justification of the vast and expensive intelligence effort which is maintained by our government. To do so it must have the organizational strength and powers of access to enable it to function effectively and responsibly.

Intelligence gathering is an important activity in the operations of many government agencies. Not only foreign and military intelligence but intelligence

gathering concerning civilian activities and the law enforcement intelligence operations most significantly involving the FBI and the IRS require the most careful examination and scrutiny by the Congress. Activities which are outside the rule of law must be confronted and the general purposes and extent of such activities rationalized and balanced against competing national interests.

We must also pay particular attention to the need of the Congress in order to legislate wisely for intelligence information and to determining what is needed for the people in determining their attitude on legislation.

I look forward to the wide array of witnesses which the Committee has scheduled and the opportunity to help in resolving these extremely complex and important issues.

Chairman RUDICOFF. Mr. Phillips, please.

Mr. Phillips is the former Chief of Latin American Operations for the CIA. During the midst of the criticism of the CIA, Mr. Phillips resigned to organize U.S. intelligence officers to defend the CIA against those who attack it.

The group is called the Association of Retired Intelligence Officers, and I think it is only proper that we hear from some one who represents the men in the field who do a lot of this work and who have been under criticism. We welcome you and appreciate having your views, Mr. Phillips.

TESTIMONY OF DAVID ATLEE PHILLIPS, PRESIDENT, THE ASSOCIATION OF RETIRED INTELLIGENCE OFFICERS

Mr. PHILLIPS. Thank you, Mr. Chairman.

Thank you for inviting me to appear before the Government Operations Committee in connection with your deliberations on the intelligence community.

I am a retiree of CIA and the elected president of the Association of Retired Intelligence Officers, an organization of 600 men and women who have served in some aspect of intelligence in CIA, the Department of Defense, the Department of State, the FBI, or other agencies.

ARIO—the initials denoting our group, not a cryptonym or code word—is a private organization independent of any government agency.

Its purpose is to promote public understanding of our country's need for timely and accurate intelligence and to foster a full appreciation of the role of intelligence and counterintelligence.

Responding to your questions today I can state my own views and those of my colleagues. This is because I recently polled ARIO members in preparation for this appearance. There were more than 300 responses to my questionnaire.

Sixty percent added some comment, and 10 percent attached quite lengthy comments, indicating a satisfaction in participating, even indirectly, in this intelligence discussion.

We hope our experience will be useful. The thoughts I will convey today come from men and women who have spent their lives in intelligence at home and abroad. Conservatively calculated, the views reflected in the poll represent some 6,000 years devoted to the intelligence profession.

Perhaps the opinions on congressional oversight and covert action operations will be of most interest to this committee. First, brief observations on other issues.

When percentages do not total 100, an undecided or no opinion element exists.

Queried about PFIAB, the President's Foreign Intelligence Advisory Board, 51 percent of the respondents said it should remain as it is, but play a more important role; 30 percent believed it should be expanded and play a very significant role; 10 percent thought it should be eliminated; 83 percent believe the 40 Committee, with representatives from the Executive, Departments of Defense and State and CIA, should remain about the way it is.

The 8 percent who thought it should be expanded suggested congressional membership in that exclusive club or, in several cases, someone from the Department of Justice who could act as a before-the-fact legal advisor; 55 percent believe the current practice of an Inspector General for each agency is correct, but 41 percent did not agree, asking for an independent Inspector General over all agencies.

Exintelligence people are unequivocal in their opinion about money figures; 87 percent are convinced the intelligence budget should not be revealed at all, in the public sense; 8 percent believe it should be more open; only 4 percent favor full, public disclosure.

Concerning the degree of exposure of previously secret sensitive operations of the past, 28 percent believe up to 10 percent of them are known, 41 percent that between 10 percent and 20 percent have been revealed, and 14 percent believe that more than 20 percent, perhaps as much as 60 percent have been.

Exintelligence officers conclude that this has resulted, according to their damage assessment, in United States intelligence capabilities being affected as follows: 6 percent believe capabilities have been reduced slightly, 72 percent see them damaged significantly, and 20 percent consider them crippled.

Almost 80 percent of ARIO's members believe that the senior U.S. intelligence chief should be, as now, the head of the CIA, wearing two hats. The other 20 percent would like to see him outside the CIA, reporting to the executive. About two-thirds of us think any CIA Director should be an intelligence professional from Defense or CIA; the others believe the choice should depend on the qualities of the person, whether he is a professional or an outsider; 78 percent see no reason for a change in the name of the CIA; 17 percent opt for a new one.

Predictably, exintelligence people yearn for secrecy. Only 4 percent are satisfied with present legislation; 22 percent would be willing to settle for a new law which would hold liable exintelligence officers who betray secrets, especially those miscreants who identify their former colleagues abroad.

Patterned on the British Official Secrets Act, 73 percent want a new law which would restrict everyone. In most cases, however, those voting for this recognize their desire as wishful thinking.

Related and relevant is how the respondents feel about declassification of Government intelligence secrets. They feel strongly. The final authority should rest with the executive rather than Congress, 94 percent say.

I will not dwell overlong on the three questions in our survey about Congress, recognizing that Congress should go about its business as it sees fit. But, briefly, the results: 88 percent of our members devoutly

wish a single, joint committee to oversee intelligence, especially covert operations. Many, a large number, saw that this would be difficult because of jurisdictional problems.

There would be one committee in each the Senate and the House, 10 percent hoped; 1 percent is happy with the present arrangement of six committees. About 70 percent believe awareness of very sensitive covert operations should be confined to 10 or less Congressmen, the remainder believe up to 20 should be advised.

Only 3 percent of our members believe Congress should be briefed in advance and have veto power over sensitive covert operations; 39 percent think you should be advised after the fact. A majority of 56 percent want Congress to be advised in advance and to have the opportunity to comment before the fact on the advisability of covert operations.

Despite appearances and low morale of its personnel, the intelligence community is not in disarray. Quite the contrary. It appears neither necessary nor desirable to change many of the patterns which have been built up often by painful trial and error over the past 30 years and are today effective. But there are some moveable pieces to be inspected.

One of my colleagues has identified the "five slices of the CIA pie that can be detached, discarded, or passed around to other agencies in Washington."

These are (a) the uncontroversial overt collection of information; (b) intelligence research and analysis; (c) espionage and counter-espionage; (d) covert political action operations; and (e) paramilitary operations.

Responses to two ARIQ survey questions may be useful in this area. Covert action operations to influence events abroad should be abandoned, say 2 percent of our members; 83 percent want them to be conducted, as now, by CIA; 4 percent would have covert operations handled in another Government agency; and 7 percent believe CIA should continue noncontroversial, routine covert action but the major operations, such as support of political parties and secret armies should be entrusted to a new unit.

Of exintelligence officers, 55 percent believe CIA should continue to have a clandestine paramilitary capability, as now, with Defense Department cooperation. However, 35 percent demand that paramilitary responsibilities should be removed from CIA and given to Defense and 4 percent said these capabilities should be abolished.

We see three aspects of the intelligence controversy as requiring very special congressional attention.

How should the Government view and deal with intelligence situations in which specific laws have been broken yet an argument exists that public interest was served? In our country we must honor the Constitution. Abroad covert action and espionage cannot be authorized in comfortable legal terms. Western democracies cannot logically legalize the illegal. Historically this dilemma has been dealt with by concealing the espionage function and isolating it from national authority.

Are there adequate safeguards against the use of intelligence for partisan political purposes? This problem surfaced but did not mate-

rialize in the McCarthy era. Watergate testimony indicates a disposition of the Nixon administration to use intelligence resources improperly.

We believe this chimera should be looked at coolly and in perspective. Neither the survival of our form of government nor any of its institutions have been seriously threatened by the problems which have arisen.

The very existence of a secret intelligence service is a risk, but one we must accept because of the net gain. The best that can be done is: A popularly elected President who can be removed from office, a CIA chief who is approved by Congress, a separate chief of the clandestine service whose mission is limited, and a congressional oversight system of monitoring trends.

Finally, the nature, scope, and control of the executive use of covert political and military action abroad carried out by the clandestine service of the CIA. There is a moral question of balance between the character and scope of covert activity acceptable to the principles and practices of our Nation and the steps necessary for national survival and power among nations and the defense of Western open society.

This is a very practical question, for if some covert activity is permissible as long as it does not affect the principles of our society, how can it be administered and controlled and yet remain effective?

Covert action is one of a panoply of instruments of influence ranging from diplomatic statements to force of arms. Where peace to closed societies means merely the cessation of the use of official armed forces but the continuing use of other forces, the United States has sought to identify and neutralize these forces, often by various covert means.

It is understandable and desirable that where Congress constitutionally determines our commitment to official war, Congress should participate in the guidelines of covert struggle and unofficial war.

Clearly, in the post-World War II world, the executive has found the covert response to threats to our interests appropriate. A congressional monitoring and check as to whether this drift is appropriate is a natural act. But the legislative should not be made responsible for secret and illegal operations. The executive, which must be responsible, must be given some discretion.

Whether a capability to execute covert action operations can be reestablished—it does not exist now—in our Government is open to serious question.

History, practices of other governments, a study of the nature of espionage, and covert action, show emphatically that the function should be concealed in Government structure and isolated from official national authority.

Some want the function unconcealed and tied officially to the highest authority. This will not work.

Gentlemen, you are about to revise intelligence rules established more than a quarter of a century ago. I wish I could identify some eminent authority, a political scientist with the wisdom and vision of a Leonardo da Vinci, who could sketch for you the year 2000.

The critical aspect of your approach to the dilemma of secret operations in an open society is, former intelligence officers believe, the

drafting of legislation suitable for the America of 1976—so soon after Vietnam and Watergate which will also accommodate the conduct of intelligence in an unknown future in an imperfect world.

Thank you.

Chairman RUBINOFF. Thank you very much, Mr. Phillips.

You mentioned in your statement that 98 percent of your members favor some sort of new intelligence committee, and only 1 percent want it as it is now.

Why do you think that is?

Do you believe that the creation of an intelligence committee would actually bolster the effectiveness and reputation of the agencies?

Mr. PHILLIPS. Sir, I think that there is no question of that. The rationale behind that statement is that the degree of leaks and exposure of previous operations has been great enough that it is felt that six committees would be—how many people must know about these committees, staff members, and so forth?—will inevitably lead to such leakages.

One of the interesting aspects of our poll is that we extracted from these 300 responses about 15 which were from the most senior members of the intelligence agency.

Where the normal member of our association thought that perhaps 20 percent of our secrets of the past had been exposed, these very senior members who have dealt with the Executive and with Congress believe that 60 percent or more have been exposed, so that intelligence organizations and intelligence officers look to a single joint committee, or at least one committee in each House, which we believe—and you have certainly shown in these discussions yesterday and today, the importance of maintaining secrecy—would bolster the efficiency of intelligence operations.

Chairman RUBINOFF. Therefore, the men in the field, the men on the firing line across the world, believe it would be better and timely—and the sooner the better—to create a single oversight committee instead of the six?

Mr. PHILLIPS. Absolutely.

Chairman RUBINOFF. You mention in your statement that although only 3 percent of your membership believes Congress should have veto power over sensitive covert operations, a majority, 56 percent, want Congress to be advised in advance and have the opportunity to comment before the fact on the advisability of covert operations.

Could you tell us what the reason is behind that?

Mr. PHILLIPS. I think that I would be less than candid if I did not say that intelligence officers want others to share the responsibility, to take some of the heat after the fact, especially when that heat is applied 15 or 20 years later. That is certainly part of it.

Where that statement says comment before the fact, we mean by this to make their opinions known to the Executive so that if the Executive goes ahead with the decision for covert action it is aware of the reservations of Congress.

I must say, however, that in all of these answers to our questionnaires, in the comments, these answers usually said: This is predicated on the assumption that we are going to have the kind of committee which would be able to keep secrets.

Chairman RIBICOFF. Your membership would not favor this committee to have the veto power over whether or not an operation goes forward. That is the decision of the President, or the Executive?

Mr. PHILLIPS. That is true, sir.

Chairman RIBICOFF. Senator Percy?

Senator PERCY. Thank you, Mr. Chairman.

Following up on that same question, do you feel that the implication might be of intelligence officers that only a handful want Congress to have a veto power but they want to share the responsibility? Is there some implication that they feel there ought to be some congressional oversight over some of these operations which they might not believe in?

What is your feeling as to the group that you represent as to the confidence they feel that most of the time they have been right in the things that they have been carrying on and doing? Many members of the intelligence community have said in their judgment that many times, too many times, we were on the wrong side, we were identified with the sure losers, and we could not have made out very well?

Mr. PHILLIPS. Senator, I think that perhaps the best answer to that is to indicate that I believe that most intelligence officers, especially those involved in sensitive political operations, are really becoming pretty weary of operating under the Charter which says that they have "other such functions and duties," and no one has ever written out what those "other such functions and duties" are.

I know of a number of instances where intelligence officers have asked, why are we doing this? The answer was, because the President says that is one of your "other functions and duties."

That phrase in the 1947 Charter which established the CIA is what I call the great big banana peel. I think that intelligence officers are looking for guidance. They want to know what is expected of them, and that is really the answer.

Senator PERCY. I would like to ask you about your organization.

Do you intend to ever publish a list of your membership?

Mr. PHILLIPS. We discussed that. We found we now have about 650 members, that perhaps 100 of them are in positions where they said that they cannot acknowledge the fact that they were once intelligence officers. About 30 of that hundred say they cannot do that because of the extremely sensitive positions they held. The other 70 say they are afraid that they might lose their jobs if the places where they work know that they once worked as intelligence officers.

It is not quite that dramatic, but to one degree or another, they feel that in their local communities they do not want it known that they once worked in intelligence. I think that is an indication of the concern of intelligence officers who have devoted their careers to intelligence and feel somehow these days that they are second-class citizens.

The fact that this group has been invited here today has done a great deal to erase that.

Senator PERCY. I was in Paris on a personal visit last week, but went in to see our Ambassador. It was the very time that the list of CIA agents in France had been printed—which I just abhor. It caused anguish and concern. There were mistakes that were made on the list

of the names, addresses, and phone numbers of all presumed CIA agents in Paris. It was quite a turmoil and caused hundreds of phone calls.

I can well imagine why you would not want to publish the list.

How do you get the membership list? How do you go about, as a former member of the CIA, to get access to the names and addresses of all the 650 former operators?

Mr. PHILLIPS. It began with my Christmas card list, Senator. I sent out forms to people that I usually send Christmas cards to. I asked them to send me \$10 and join my organization, and to put on the back of the application the names of people who they thought might want to join.

That was proliferated, and usually when the applications come back from a new member there are 30 or 40 or 50 names. This organization started out with five members of the Clandestine Service of the CIA. We were immediately joined by military officers who were enthusiastic and now constitute almost 25 percent of our membership.

Senator PERCY. How is the organization financed?

Mr. PHILLIPS. By the due of \$10 a year. Sometimes some contributions. Our expenses are not heavy, because the office of the organization is my home.

As my wife often points out, we have a Xerox in the bedroom.

Senator PERCY. For the record, I would ask you, does the Agency finance you in any way?

Mr. PHILLIPS. It does not.

Senator PERCY. Or did the Agency officially encourage you to establish this organization?

Mr. PHILLIPS. It did not.

When I decided to do it, I went to see Bill Colby. I did not ask his advice. I told him what I was going to do.

He asked me to stay on. I was running CIA operations in 20 countries in the world, but I had the feeling that Colby was not totally unhappy that such an institution would be formed. But he did not encourage it, nor have we ever taken any sort of official funds or advice.

Senator PERCY. I would appreciate your objective analysis of the objectivity of those who have answered your questionnaire.

Could you just comment on how differently they might see these operations as against someone who had not actively engaged in the intelligence field?

Mr. PHILLIPS. Obviously, I think that people expect in this investigation of the intelligence community that the answers from intelligence people will be predictable. I did not find that in all cases, Senator.

I was quite surprised, for instance, to find that the majority favored the Congress knowing of and commenting on covert action before the fact.

I also note that there is a particular stance that I have, a personal recommendation that I have made to the Senate, and I am sharing that with a resounding minority of 7 percent of the members. So while it is not a precise list, I think it is an honest list, because, contrary to opinion, the job of an intelligence officer is to arrive at the truth,

or a proper perception of the truth, for policymakers. I think that the answers are honest ones.

Senator PERCY. I want you to know that I put in the record yesterday an article that I had written for the Chicago Daily News a year ago. I was deeply concerned about morale in the intelligence community at that time. It has gotten much worse.

But I can assure you that the members of this committee—and I certainly, as one Senator, will do everything that I can to always point out the invaluable service that has been provided by the CIA and by other intelligence agencies. We could not operate as a nation without that kind of work.

That is not to condone the reprehensible acts that have been carried out without even the knowledge of the Director or the President.

We will certainly try to be balanced in these hearings. The most fair man I know in the United States is our chairman.

Chairman RUBINOFF. It is really sad when you consider that men and women who have risked their lives over a period of many years to gather information for the President and the Nation feel a sense of shame to go back to their home communities and say they worked in that capacity for the United States of America. What we are doing today to get an oversight committee in no way, as far as I am personally concerned, reflects upon the character and ability of the individual members of your organization. I am glad to have the reaction of your membership, because contrary to those who want to do nothing, my feeling is that the intelligence gathering agencies are under a very, very dark cloud and until we have an oversight committee, we will not be able to restore the confidence of this Nation. And you and your membership feel the same way, too, that an oversight committee established in the Congress would be very, very helpful to the intelligence agencies, is that correct?

Mr. PHILLIPS. That is correct, sir. In the field, an intelligence officer, a military intelligence officer, someone from the CIA, is delighted to have a good ambassador who establishes control over what he does. He does not get into trouble, and he is able to do his job correctly.

Senator PERCY. Mr. Chairman, I would ask unanimous consent that a couple of additional questions that I have submitted to Mr. Phillips. If we could provide the secretarial help before he leaves, we would not burden him at home, then, with further work.

For the record, I would like an expansion on what the British Official Secrets Act is and a few other things.

Chairman RUBINOFF. Without objection, the staff and the secretarial help will be available to you so that you do not have to have your wife or yourself pecking on your typewriter with one finger. You can bring it in and give it to them. Mr. Wegman will arrange that.

[The information referred to follows:]

ASSOCIATION OF RETIRED INTELLIGENCE OFFICERS.

Bethesda, Md., February 3, 1976.

Senator CHARLES H. PERCY.
Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR PERCY: I refer to your inquiry to me during the hearings of the Government Operations Committee of 22 January concerning the British Official Secrets Act and my subsequent note to you indicating that I would make inquiries within the capabilities of ARIO.

The Official Secrets Act was passed in 1911 reenacting the Official Secrets Act of 1889, Britain's first legislation directly concerned with official secrets. It provided for the punishment of those persons who either give information to enemies of the country or who act as spies, or make or communicate plans or sketches of fortifications or like places, or disclose official secrets. Section I of the Act deals with spying, Section II with the leakage of official information. In numerous cases brought to trial the meaning of official secrets was given broad interpretation. The law was extended and strengthened by amendment in 1920. While there was little debate in passing the 1911 act, there was protest over the amendment within and outside the government, reflecting concern for a Free Press. I attach copies of the Acts.

Also, I draw your attention to the report of the "Departmental Committee of Section II of the Official Secrets Act of 1911", published in 1972. Concerned that the British government had become "surrounded by too much secrecy" and that "public interest would be served if there was a greater amount of openness" the Conservatives, with the approval of Labor, formed a committee under Lord Franks to make a broad inquiry into Section II of the Act. Its report, more than a year in preparation and comprising 18 Chapters and 8 Appendices, looked at the situation now, taking account of the world changes since 1911 and contemporary conditions, the issues, official information requiring the protection of criminal sanctions, who should be liable to prosecution, the enforcement and operation of a revised Act, (even commenting on U.S. practices) and made recommendations for a new Official Information Act with more limited and certain provisions in lieu of Section II of the Official Secrets Act. These recommendations are still being considered for enactment into law. The Commission's findings and recommendations with regard to government secrecy and democratic control illuminate aspects of the problems the Congress had been studying.

Further, I draw your attention to the Book "Not In The Public Interest" by David Williams, published in 1965 by Hutchinson and Co., Great Portland Street, London W-1. The author provides a thorough, objective and thoughtful indication of the scope of executive or government secrecy at the present time in Britain. Among other topics he describes the D Notice procedure. Two sentences from his 10 page conclusion are:

"On numerous issues the choice between secrecy and publicity is extremely difficult to make, so delicately balanced are the respective advantages and disadvantages Secrecy and security have to be balanced against the legitimate demands for an informed public opinion which is, when all is said and done, the essential element in a country which claims to be democratic."

Finally, I am aware that the CIA, finding no American study of the Official Secrets Act, undertook in its own interests a study of the Act in 1958 and again later. I believe its enquiry would assist you in shedding light on the appropriateness of the Official Secrets Act as seen from American jurisprudence. In this regard, Mr. Larry Houston, former legal counsel for CIA, has told us he would be glad to talk to anyone on your staff about this.

There, I'm afraid I've told you more about the subject than you wanted to know. On another matter, you asked about adequate safeguards against partisan political purposes. With the divergence of views which exist now among intelligence personnel—who are a representative lot—it would seem impossible for a significant movement in support for one party or politician or another to last long.

When I said that a capability for covert action does now exist, I was trying to, too tactfully perhaps, say that a Congressional and Executive capability does not exist to protect secrets. Thus actions can go forward, but simply will not remain secret—as we have seen in recent weeks.

You ask if thin, or light cover is an accepted practice abroad. Yes, where there is a liaison arrangement with a local security service, and this occurs almost everywhere except in socialist and very remote countries. All the deep cover in the world will be a waste of time if it must be revealed to indigenous colleagues. It is true, however, that light cover is used too frequently and, when it is, a review of overt directories will reveal intelligence operators. This can be corrected if care is taken in publication of such volumes as the Biographic Registry of overseas personnel is compiled with more care.

Sincerely and cordially,

DAVID ATLEE PHILLIPS.

Chairman RUBINOFF. Senator Nunn?

Senator NUNN. I would like to agree with the chairman's last statement about removing the cloud. I think that is important. That is one thing that we must do in this committee. We must create a mechanism that the American people and the Congress have confidence in, a mechanism that will enable the Congress to participate, that does not leak.

I think that is a very strong mandate that we must do. The work of this committee, as I see it, can greatly improve that confidence, and greatly assist the intelligence community in carrying out the purpose established under the laws.

Just a couple of questions. We are running out of time here.

On page 4, Mr. Phillips, you say that the ability to carry out covert operations does not exist in our Government at this time.

Would you care to elaborate?

Are you saying that we cannot, as a Nation now, no matter how important it might be, carry out a covert activity under the present cloud? Is that right?

Mr. PHILLIPS. What I am trying to say is that we can carry out the activity, but it appears inevitable at the present time that somewhere along the line these days, sooner rather than later, sometime before the fact, it becomes public knowledge. Consequently, it can still be carried out successfully, but it is no longer a covert action.

Senator NUNN. You may not have been here when Mr. Katzenbach was suggesting a moratorium on covert activities.

What you are saying now is that you have a de facto moratorium, from a practical aspect?

Mr. PHILLIPS. In the sense of it remaining covert or secret, yes, sir.

Senator NUNN. Just how important, in your estimation as a field officer, do you think covert activities are? Suppose there were a moratorium on covert political activities as opposed to covert intelligence activities. What kind of effect do you think this would have given the most likely world scenario in the next couple of years?

Mr. PHILLIPS. Senator, first of all, there would have to be a clear definition of the two kinds of covert activity.

Senator NUNN. Which would be difficult.

Assume that there can be that kind of definition.

Mr. PHILLIPS. Separating it completely from intelligence collection, most covert activity is routine, noneontroversial, and something that you would not even bother to discuss here.

For instance, there is a covert action mandate for all intelligence officers abroad to cooperate with the DEA in inhibiting the flow of hard drugs to this country. Covert action is used in one way or another to do that, influencing local officials abroad, so that a broad, sweeping moratorium would not be a good idea, I think.

In the sense of a moratorium on major actions of a political kind, in effect, I think intelligence officers believe that they would rather have that moratorium than the present situation in which the likelihood is that it would not remain a secret operation.

Senator NUNN. One other question. On page 3, you state, and I quote, "Despite appearances, and low morale of its personnel, the intelligence community is not in disarray."

How is this affecting our current capability in the intelligence field, which I happen to think is indispensable for our national security?

Are we in a state of jeopardy now, or just how serious is the situation, viewed from the field?

Mr. PHILLIPS. The problems are numerous. The most important are these, Senator:

One, our relationship with other intelligence services, often very important to us. Before I retired from the CIA some 8 months ago, a representative of one of the world's major intelligence services came to me and asked me to please return all documents that he had given me for the past several years. We continued to have lunch together, but there was less and less talk about intelligence.

The second aspect is the ability to recruit new agents abroad, to advise us on particular things. If we want to know about the development of a nuclear device in a Third World country, it is much more difficult to recruit, say, a professor or a scientist than it was before because of their lack of confidence in the protection of their information.

Finally, a good deal of intelligence that is valuable comes from what we call in the trade "walkins," people who volunteer, sometimes for money, sometimes because they want to be traitors, usually because they like our form of government more than theirs. Penkovsky was a walkin.

Senator, I cannot imagine a man in a country around the world these days who, having decided that he wanted to make a connection with a foreign intelligence service, would walk in to the American service. He would choose the British, the French, or the Israelis.

Senator NUNN. Mr. Chairman, I know we have a time problem.

I would just like to commend you, Mr. Phillips, for having formed this group and in articulating the point of view of those who have served their Nation well. I commend you for that. I think it certainly must have been done out of love of your Nation and your concern for national security. I think your testimony here demonstrated that. It has been a great benefit to the Congress as we try to correct the errors of the past without damaging what is essential for the future.

Chairman RUBINOFF. My thanks to you, Mr. Phillips. Your testimony, in my opinion, will be very helpful in the committee and on the floor toward the establishment of this committee. I thank you for giving us your time.

This committee will stand adjourned until 10 o'clock tomorrow morning.

[Whereupon, at 12:25 p.m., the hearing was recessed, to reconvene Friday, January 23, 1976, at 10 a.m.]

OVERSIGHT OF U.S. GOVERNMENT INTELLIGENCE FUNCTIONS

FRIDAY, JANUARY 23, 1976

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The committee met, pursuant to notice, at 10:30 a.m. in room 3302, the Dirksen Senate Office Building, Hon. Abraham Ribicoff, chairman of the committee, presiding.

Present: Senators Ribicoff, Nunn, Glenn, Percy, Javits, Brock, and Weicker.

Staff members present: Richard A. Wegman, chief counsel and staff director; Paul Hoff, counsel; Paul Rosenthal, assistant counsel; Marilyn A. Harris, chief clerk, and Elizabeth A. Preast, assistant chief clerk.

Chairman Ribicoff. The committee will be in order.

We welcome you here today, Mr. Colby. You may proceed, sir.

TESTIMONY OF W. E. COLBY, DIRECTOR OF CENTRAL INTELLIGENCE, ACCOMPANIED BY MITCHELL ROGOVIN, SPECIAL COUNSEL TO THE DIRECTOR OF CENTRAL INTELLIGENCE; GEORGE L. CORY, LEGISLATIVE COUNSEL, AND DONALD F. MASSEY, ASSISTANT LEGISLATIVE COUNSEL

Mr. COLBY. Thank you, Mr. Chairman.

Thank you for this opportunity to discuss congressional oversight of our intelligence activities. Despite all the excitement in recent months over CIA and other intelligence activities, this is one of the most critical issues which must be faced in any serious investigation into our Government's intelligence activities.

Traditionally, intelligence is assumed to operate in total secrecy and outside the law. This is impossible under our Constitution and in our society. As a result, when CIA was established in 1947, a compromise was made under which broad, general statutes were drawn, and carefully limited arrangements for congressional review were developed. It was then believed necessary to limit oversight in the interest of secrecy.

Our society has changed, however, and a greater degree of oversight is now considered necessary. U.S. intelligence has already moved out of the atmosphere of total secrecy which previously characterized it. We who are in intelligence are well aware of the need to retain public

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confidence and congressional support if we are to continue to make our contribution to the safety of our country.

Thus, from the earliest days of the current investigations, I have stressed my hope that they will develop better guidelines for our operations and stronger oversight, to insure that our activities do remain within the Constitution and the laws of our country.

But I have not swung all the way to the other extreme of the pendulum to the position that there can be no secrecy. General Washington once said: "Upon secrecy, success depends in most enterprises of [intelligence]." We have many secrets in America which are necessary to the functioning of our democracy—the ballot box, the grand jury, and our attorney-client relationships. The secrecy of our sources of intelligence is equally important to the preservation of our democracy, and even our Nation in the turbulent world in which we live.

In 1947 we took a small step away from total secrecy by enacting general statutes and constructing careful oversight arrangements in the Congress. Proposals now under consideration would alter these arrangements to assure more detailed oversight. But it is essential that the pendulum not swing so far as to destroy the necessary secrecy of intelligence, or destroy intelligence itself in the process.

In former comments on this subject, I many times said that it was up to Congress to organize itself to exercise the necessary oversight of our intelligence activities. This is still true, but I believe that recent experience permits me to draw some conclusions on this topic which this committee has graciously invited.

The matter has been extensively studied within the administration during the past year, as President Ford shares many of the concerns of the Congress on this subject. The Rockefeller Commission, the Murphy Commission, our discussions with the select committees and other committees reflect this interest. A number of detailed studies were also made within the executive branch, reaching the level of two extended meetings President Ford had with National Security Council members.

The views of the administration are not yet formally fixed, so the comments I will make will be personal and based on my experience. My participation in the studies above, however, assures me that my views are in general compatible with the thrust of what President Ford will probably decide, although there may be some variation in the details.

Too great a stress on secrecy has led to situations in which Members of Congress who were fully briefed on intelligence activities pleaded later that they had never heard of them when they came to public attention. One of the chairmen of our committees once indicated, on the floor of the Senate, that he had no inkling of one of our operations, although he had approved the specific appropriation necessary to continue it. His statement certainly kept the secrecy of his participation in our operation, but at the sacrifice of implying that our intelligence activities were operating without oversight and control. Indeed, he added to public concern that we constituted some independent "invisible government."

On a number of occasions, especially since 1956, proposals have been made to establish a Joint Committee on Intelligence, but the

Congress has never seen fit to adopt them. During this past year jurisdictional problems have been highlighted in the Congress as a result of two things.

First, foreign intelligence today is not primarily limited to military intelligence, as it may have been in earlier years. It is also now of interest to those committees concerned with our economy, our foreign relations, our agriculture, space, and a wide variety of other activities. As a result, we have had a proliferation of demands for congressional review of sensitive foreign intelligence matters in these fields by other committees, to the degree that 59 Senators and 149 Representatives have been briefed on some aspect of our activities this past year alone.

Second, during 1974, there was much congressional interest in our covert action activities, sparked by exposure of testimony I gave to one of our oversight committees on the subject. Both the House and the Senate, by 3 to 1 majorities, turned down proposals that CIA be barred from such activities. But in December 1974, a provision was added to the Foreign Assistance Act which required that any CIA activity abroad other than intelligence gathering could only be conducted if it were found by the President to be important to the national security and reported in a timely fashion to the appropriate committees of the Congress. Together with the two select committees, these appropriate committees now number eight.

I might quote, Mr. Chairman, from the conference report which led to the adoption of that new act. It says that: "The Committee of Conference agrees that strict measures should be taken to insure maximum security of the information submitted to the Congress pursuant to this provision."

The executive branch is fully complying with the provisions of the new law. The President made the appropriate findings, and briefings were given to the committees according to whatever arrangements the committees made. It was stressed and understood on all sides that these matters were sensitive, secret operations, whose exposure would cause political damage to our foreign policy as well as frustration to the operations concerned. The result of the year's experience, in my mind, is clear. The system won't work. Every one of the new projects that were subjected to this process has leaked into the public domain. I am prepared to argue the value of each of these projects, but that is not my current point. The fact is that a secret operation conducted precisely according to the procedure set up by the Congress cannot be kept secret. I believe it essential to repeal that procedure and replace it by another which will include provisions for adequate secrecy.

In this Bicentennial year, it is appropriate to note an earlier American experience with this problem. On November 9, 1775, the Continental Congress adopted a resolution of secrecy under which any Member who disclosed a matter which the majority had determined should be kept secret, was to be expelled "and deemed an enemy to the liberties of America." On November 29, 1775, the Congress established the Committee on Secret Correspondence and gave it foreign intelligence responsibilities, managing a network of secret agents in Europe. The committee took steps to protect the secrecy of its intelligence ac-

tivities by sharply restricting access to operational matters. On one occasion, the committee justified the secrecy of its information as follows:

Considering the nature and importance of it, we * * * agree that it is our indispensable duty to keep it secret, even from Congress * * *. We find, by fatal experience, that Congress consists of too many Members to keep secrets.

Mr. Chairman, at that time there were 56 Representatives in the Congress, compared to the 208 that I reported briefing during 1975.

If the Congress should decide to adopt new oversight arrangements, I believe it should establish a representative group to oversee intelligence activities on Congress' behalf. This representative group could be a joint committee or another arrangement. In any event, a representative group should consist of a restricted number of Members so that we do not involve the large numbers of Congressmen currently briefed on our sensitive activities.

The representative character of such an oversight body must be respected by us in the intelligence community, so that we make available the information it needs to do its job.

At the same time, arrangements can and should be developed between such a representative body and the intelligence community by which reasonable limits are established as to the matters made available even to it. In my present post as Director of Central Intelligence, I do not insist, for example, upon knowing the name of a foreign agent in some dangerous situation. It is not necessary to my duties that I know his specific identity. It is essential that we be able to assure our foreign agents abroad, a number of whom have already expressed their alarm and limited what they tell us, that their names will be totally protected, since their lives or livelihoods are at peril. I would expect that a responsible representative committee of Congress would similarly not request such specific identification, as our current oversight and select committees have not requested such sensitive information. Understanding of this nature between a responsible oversight body and the intelligence community would be more productive than adversary debates over either branch's "right" to have or to withhold such information.

A responsible oversight body must not discourage the intelligence community from conducting its own investigations and correcting its activities. A great portion of this year's investigations has consisted only of public repetition of the private reviews by the intelligence community of its own activities. Since the full story of American intelligence remains secret, the impression is left with our public that what was revealed is characteristic of the whole. The experience has done little to encourage objective and hard-hitting self-examination in the future. CIA's collation of a list of some questionable activities in the domestic field was used as the basis for sensational charges of a massive illegal domestic intelligence operation. In truth, our misdeeds were few and far between, as the final Rockefeller Commission report reveals. CIA's investigations into possible assassination activity, which led to specific directives in 1972 and 1973 against such activity, have been the basis for sweeping allegations that assassinations are part of our function. We never assassinated anyone, as the Senate report on intelligence reveals. And our own post mortems of our performance in

various intelligence situations have been selectively exposed to give a totally erroneous impression of continued failures of American intelligence. In fact, we have the best intelligence service in the world. But we cannot keep it that way if every one of its corrective efforts is trumpeted to its enemies.

In the consideration of any altered oversight arrangements, the Congress should, I believe, deal with the problem of proliferation of congressional review of intelligence activities. I strongly urge that oversight be concentrated exclusively in the minimum number of committees necessary to effectively conduct it, which to me means one. Otherwise, we are in danger of reverting to the situation of reporting to a myriad of committees and exposing parts of our activities in all directions. It should be possible to concentrate congressional oversight, perhaps arranging that the oversight committee have representation from the other standing committees with interest in this subject.

The issue of giving prior notice to Congress of sensitive intelligence operations has been raised, Mr. Chairman. I believe this is a thoroughly false issue. The present statute calls for the appropriate committees to be informed "in a timely fashion" with respect to activities abroad other than intelligence gathering. Our regular oversight committees are kept currently informed of major developments, and each year they review our appropriation request in great detail.

A requirement of prior notice before any intelligence activity could be undertaken would, in my view, conflict with the President's constitutional rights, would be totally impractical during times of congressional recess when crises can arise, and would add nothing to the ability of the Congress to express its views about any of our activities. We currently inform the Congress on any decision immediately, although the actual hearing may be delayed by the committee in question for several weeks. Almost none of our activities are single-step operations which take place on only one occasion. An intelligence or covert action operation is generally a continuing effort running over some time. Informed of such an activity, a committee has every ability to express the concern of its individual members, to vote in committee its opinion with respect to the activity, to appeal to the congressional leadership, and even to seek an appointment with the President himself. The committee also retains the ultimate legislative or appropriation sanction, if its views are not given due weight.

The unilateral exposure of an operation to public notice is not the solution. In essence, the theory adopted by some is that the right to expose such operations constitutes a superconstitutional individual veto of any secret activity. We cannot run such secret operations, Mr. Chairman, if Congressmen confirm to inquiring newsmen operating on a lead that indeed they were given a secret briefing on a covert operation in a certain country, instead of refusing to comment. Neither can we run secret operations if individual Congressmen announce that there are three other operations which have not yet been disclosed, thereby stimulating every investigative reporter in Washington to determine the specifics thereof by some hypothetical questions. And we cannot conduct covert operations if a committee puts out a report which refers to an activity, leave out the name of the country or individual concerned, but giving enough evidence for any amateur sleuth to identify it beyond

a shadow of a doubt in time for its identification to be carried with the newstory of the report.

An essential element of new congressional oversight arrangements is better procedures for protecting sensitive information. Senate rule 36 (3) and (5) states that confidential communications from the President or head of any department are to be kept secret unless the Senate votes. But the Senate, on November 20 last year, failed to vote on the release by the select committee of information which the President specifically requested be kept secret and in the face of my request that certain names of CIA personnel therein be deleted.

In the House of Representatives, rule XI.2.(e) (2) provides that the records of any committee are open to any Member, which on at least one occasion has led to the exposure of certain CIA operations despite the written promise of a Member to keep them secret.

The arrangements for Congress to receive and protect sensitive information are most imperfect. A prior security clearance of staff members and termination of employment for disclosure are hardly adequate sanctions to insure the protection of sensitive intelligence sources whose disclosure can produce substantial royalties. The extensive briefings and indoctrination, and the secrecy agreements employed in the executive branch, have even proved inadequate in the state of our present legislation. With respect to staff members, therefore, I believe it essential that a regular procedure of security protection be established. This must be enforceable not only by indoctrination and discipline but also by sanctions. These are contained in legislation which I have proposed and which is about to be recommended in the executive branch to cover those who voluntarily undertake the obligation of secrecy as an aspect of their employment. This proposal should apply equally to executive branch employees and congressional staff members who obtain privileged access to our intelligence secrets. With respect to Members of Congress themselves, we must, of course, look to the self-discipline of the two Houses with respect to their membership.

Mr. Chairman, we also need a procedure to determine the declassification and public release of those secrets that no longer need to be protected. This cannot be left to the individual staff member in the executive or the legislative branch. Under the Constitution, it cannot be assumed by the legislative branch alone, and any such contention would inevitably restrict the flow of sensitive information from the Executive. This could consist of an agreement that if the committee decides on release, the President has reasonable opportunity to certify that the release would be detrimental to the national security, and his determination then would govern in the absence of further resolution of the constitutional questions involved. And this must apply to any release of the information, so as not to lead to an absurd situation in which a committee agrees not to release individual reports of secret activities but then proposes to publish them in its final report.

In conclusion, Mr. Chairman, I believe that congressional oversight of our intelligence activities can be strengthened. The degree of oversight can be increased relative to that in the years in which there was a general consensus that these matters were better not known by outsiders. The structure can be improved by focusing responsibility so that a depth of knowledge and expertise about our intelligence opera-

tions can be developed. The structure can also be improved by clear assignment of responsibility for exclusive supervision of our intelligence activities to a limited number of Members of the Congress, representing the Congress as a whole, who would have full access to all information appropriate to exercise their responsibilities. And congressional oversight can be improved by making arrangements with Congress to protect the sensitive intelligence activities of our Government in the same way as we protect other secrets essential to the survival of American democracy. Executive branch supervision can also be improved by insuring the discipline of those in the intelligence profession and of their supervisors as to their respect for those important national secrets, and by giving us the ability to enforce such protection against those who would wantonly destroy them. These improvements, Mr. Chairman, in supervision of our intelligence activities, would have truly more long-lasting value as a result of this year of investigation than any other single action taken by the Congress. They would be a fitting conclusion to this year of investigation of intelligence, so that our intelligence service will be responsible to our Constitution, its legislative oversight will be equally responsible, and we will continue to have the best intelligence in the world.

It will give, Mr. Chairman, new meaning to the initials "CIA," Constitutional Intelligence for America, with equal stress on the needs of all three; the Constitution, intelligence, and especially America.

Thank you, Mr. Chairman.

Chairman RIBICOFF. Thank you very much, Mr. Colby.

Mr. Colby, you are for the establishment of an oversight committee on intelligence?

Mr. COLBY. A committee with exclusive jurisdiction for the oversight of foreign intelligence, Mr. Chairman.

Chairman RIBICOFF. Senator Mansfield, in his testimony, states that that committee should be established in this session of Congress.

Senator Weicker states that if this session of Congress does not establish such a committee, it will not be established.

Senator Tower says that we should not establish it in this session of Congress, but put it over to the next session of Congress.

Do you agree that Congress should establish that oversight committee in this session of Congress?

Mr. COLBY. I think the sooner the better, Mr. Chairman.

Chairman RIBICOFF. On page 6, you state that the CIA has never assassinated anyone.

Would you support a prohibition against the assassination of anyone in the absence of war?

Mr. COLBY. I have issued directives to that effect in the CIA, Mr. Chairman. I would have no reservation against such a prohibition.

Chairman RIBICOFF. What do you think, Mr. Colby, that a congressional committee should do if it opposes a decision to conduct a covert operation and Congress has only a few days in which to act before an operation goes into effect?

Mr. COLBY. I believe the committee might vote, the committee might express their views to the President specifically. The committee can obviously indicate that it has an ultimate authority to pass new legislation in the future, or affect appropriations in the future of the

agency involved in such activity. I think the normal workings of the constitutional tension between the two branches will bring about some resolution, perhaps not of that particular action, if the President felt it to be terribly important, but a relationship would develop between the executive branch and the legislative which would give full consideration to the views of the legislative as well as the executive side.

Chairman RUBINOFF. May I say, for the benefit of the members of the committee, we will confine ourselves to 5 minutes each for questioning because Mr. Colby must leave by 12:15.

Suppose there was such a committee and you came before it with an operation such as Angola and you found that the committee was overwhelmingly against the United States getting involved in Angola because they sensed the congressional feeling, as it has now been expressed, by votes in the U.S. Senate.

What do you see an intelligence agency doing under those circumstances?

Mr. COLBY. I would certainly report that reaction to the President. We would discuss what we should do in that situation. The situation has not arisen, Mr. Chairman. I have had situations where individual members have indicated opposition, but my sense of the feeling of the committee in question has been that other members were equally positive about it.

There are certain situations in which I have had formal documents from committees urging action in certain areas and we have taken that action and then been met with substantial opposition from other members, individual members.

I think that is the kind of thing that could be worked out. If it were organized in a fashion so that the committee could vote, we could have a decision as to what the committee's real thought was.

There was one committee that I briefed in great detail on one project and at the end of it, I was asked to summarize the result of the committee's attitude. I said that I gathered from my extensive briefing that the committee was not very strongly for it, and it was not very strongly against it. That met with general approval as a statement of the committee's view.

I think that there is a further question, Mr. Chairman, which is whether the individual members wish to be put in a position of a formal vote on these kinds of operations or whether they would rather be in a situation where they have not been committed to responsibility for the operation, freeing themselves to make congressional criticism of them afterwards if they do not work out.

Chairman RUBINOFF. We have been talking here about congressional oversight, but there is a problem of oversight in the executive branch.

You testified before the Senate Appropriations Committee in January 1975, "The arrangements for administrative supervision of the CIA and the intelligence community by the executive branch appears sufficient at this time."

Yet Secretary Rusk appeared before us yesterday and stated that while he was Secretary of State, operations were conducted by the CIA which he did not know about at that time, but only has discovered in recent days. And Mr. Katzenbach, who was Under Secretary of State at that time, when I asked him the question, he said he did not know about it, but he assumed that the Secretary of State knew about it.

How do you go about assuring that the National Security Council and the President are aware of basic and important operations by the intelligence agencies?

Mr. COLBY. Our normal procedure is to submit a proposal for a certain operation. This goes to a subcommittee of the National Security Council, the so-called 40 Committee. It is debated and discussed there. The consensus or the different positions are recorded, the matter is then taken to the President for final decision.

The National Security Council is advisory to the President. It is not an independent body of its own. It is advisory to the President.

There have been a very few occasions, Mr. Chairman, in which the President has given direct instructions to the CIA to conduct operations without informing certain other members of the National Security Council, the State Department, or the Defense Department.

There are many situations in which we conduct operations which are not known to the bureaucracy of any one of the other departments because we have the same problem of retaining secrecy, if the information spreads too far in the executive branch, as I referred to with respect to its spreading too far in the legislative branch.

The President's arrangement for the working of this kind of activity call upon us normally to go through a consultative procedure before he makes his decision, but since we are essentially using his authority in this kind of operation, I think that we have to be responsive to him directly if he so decides.

However, under present law, the point has clearly been made several times that even if the President gave a personal and direct order about a particular operation, it would still, under the law, have to be reported to the six committees of the Congress.

Chairman RUBINOFF. In other words, the committees of Congress would know, and the Secretary of State and the Secretary of Defense would not know?

Mr. COLBY. Potentially, but very hypothetically; I think that more or less will compel consultation with the other departments.

Chairman RUBINOFF. One final question.

Looking at that chart ¹ up against the wall, do you think the Directorship of Central Intelligence should be the same man that directs the Central Intelligence Agency, or do you think that it would be better if the Director of Central Intelligence were the representative of the President to supervise all intelligence agencies of our Nation?

Mr. COLBY. I think the Director of Central Intelligence needs the kind of staff support to do his function, Mr. Chairman, that the Central Intelligence Agency provides, the analysis structure which can support him in making decisions about these important events.

I think there may be a tendency for an independent Director to be a little isolated from his base of support, his base of knowledge of what is going on would therefore be less effective than the Director with more direct access to the resources of CIA.

Chairman RUBINOFF. What bothers me is, the possibility that there would be a difference of opinion as to an operation between the Central Intelligence Agency and any of the other intelligence agencies?

How do you resolve that?

¹ See pp. 501 and 502.

If you are the boss, the Director of Central Intelligence and also the head of the Central Intelligence Agency, would you also not be prejudiced toward your agency as against all of the other agencies that we have listed in that box?

Mr. COLBY. I am not the boss of the other agencies, Mr. Chairman. I have had a number of those situations in which there have been differences between CIA and the other agencies. Some of those I have recommended be resolved in favor of the CIA position; some of them I have recommended be resolved in favor of the other agency's position.

If there was a difference with, say, the National Security Agency which reports to the Secretary of Defense, obviously the NSA Director could appeal to the Secretary of Defense to support his view. I would still object to it, and we would both appeal to the President. That is perfectly possible.

That prevents the Director of Central Intelligence from favoring one group which he controls over another group over which he does have authority.

Chairman RIBICOFF. Senator Percy?

Senator PERCY. Mr. Colby, I would like to take 1 of my 5 minutes, if you would be interested, in giving you an evaluation as one Member of the Senate, what I think your job has been and the kind of job that you have done, and to tell you what I think this committee in principle is going to do.

These are the final days of your tenure as Director of the Central Intelligence Agency. I think you have handled an extremely difficult job in an exemplary fashion.

At a time when the CIA was under great attack from all fronts for misdeeds before your directorship, you have maintained a degree of candor and openness and a very welcome and appropriate sense of humor at the right time that has been, I think, in a great tradition.

I think that you have done much to shed that part of a cloak that is inappropriate to an American intelligence agency in the year 1976. I think that you have steadfastly and effectively pleaded the case to keep secret what should remain secret and which, in our form of government, I think is constitutionally provided for, and I, as one member of the Senate, will work and fight to maintain the right for us to have certain secrets in the Government.

I think that you have made a very honest and successful effort to cooperate with the two investigating committees of the Congress under what, in my view, were extremely trying circumstances. I think you can be proud of your accomplishments as Director of the Central Intelligence Agency in this regard.

I want to thank you for what I personally feel you have done and the gratitude that I think many Members of the Congress feel towards you and the American people should, and we wish you the very best of everything in everything you might undertake in your future role.

You have been a great American. I think you have performed as a great human being and I think you performed in the finest tradition of the American intelligence service.

Mr. COLBY. Thank you.

Senator PERCY. From the standpoint of what I think we are going to do in principle, I have worked with educational, political and philanthropic groups, and I have never in my life worked with a

finer chairman, a more able chairman, and a more fair chairman than Senator Ribicoff. And I have never worked with a group of men that I felt were less partisan, and more objective in seeking the truth more than the members of this particular committee.

We are going to differ in certain respects as to what we will do. I happen to think, for instance, that the oversight committee should not become part and parcel of the CIA. I do not think we should have that responsibility. We ought to exercise strict oversight. We ought to be in a position to work to fire the Directors if they fail.

Just as John F. Kennedy said to the Director of the CIA—in a parliamentary form of government after the Bay of Pigs, I would be out; in our form of government, you are out—and a change was made.

We ought to be in that position because no one can fire us, except the voters. We ought not be part of those decisions.

I, for one, will work to protect that position.

Chairman RIBICOFF. Senator Percy, I am sure Mr. Colby at this stage of the proceedings appreciates a kind word from anyone. We will not charge that word of praise to your 5 minutes. You have 5 minutes of your own.

Senator PERCY. Thank you, Mr. Chairman.

The first question is a followup on the question that I did put to Secretary Rusk and has been alluded to by the chairman.

Specifically, did you as Director, or do you know, of actions undertaken by the CIA at some lower level of a major consequence that were not known to the Director of the CIA and were not known by the Secretary of State when he should have been advised of such major operations?

I am not going to ask you what they are, but in principle.

Mr. COLBY. The only one of those that I know of is the one which came out in the Senate Report on the assassinations, the track II effort in Chile in 1970 that was conducted independently of the Secretary of State and the Department of State under the express order of the President.

There was one other operation, not a major one, which was conducted privately by the Agency. It was terminated long ago. That is all I know of.

Senator PERCY. Could you tell this committee what proportion of your time since you have become Director that you have spent either testifying before congressional committees or preparing for such testimony, or mopping up the aftermath?

Mr. COLBY. I would say it is in the neighborhood of half my time.

Senator PERCY. Is your advisor telling you that that is high or low?

Mr. ROGOVIN. I said 122 percent.

Senator PERCY. How much time do you think that Directors of Central Intelligence, to be effective administrators of that worldwide agency, what proportion of time do you think should properly be spent—and certainly some should—with the Congress to appropriately advise them?

Mr. COLBY. The most important job that the Director has, Senator Percy, is the substance of intelligence, to make sure that the right information is going to our national leadership. I think that should take something on the order of 60 odd percent of the Director's time.

The management of intelligence, including directing CIA, the resource control, and similar functions can be handled largely through staff assistance, but will nevertheless require approximately 20 percent of the Director's time.

Finally, I believe the DCI should spend between 10 and 20 percent of his time on congressional matters. I would divide that about half and half between providing substantive intelligence on the world situation, and discussing our operational activities. Regarding the latter, the Director must keep the oversight committees informed of Agency activities, must discuss proposed or desirable changes in law, and of course must discuss the budget in great detail. Substantive intelligence is best supplied through briefings on the world situation, such as I gave yesterday to one of the committees of the House, in which we discussed the problems of the Soviet Union, China, and events occurring elsewhere overseas.

Senator PERCY. Do you feel that there may be some virtue in our looking at the possibility, inasmuch as we probably will end up with a separate Senate and House committee rather than a joint committee, of trying to combine the appropriations and authorization function so that you would have to present your case and tell the details once. As long as we have a budget committee anyway, could not your briefing be done just once in each House rather than four times or eight?

Mr. COLBY. Ideally, certainly, Senator. This again gets back to the exclusive jurisdiction in an oversight committee. I would hope that committee would also have either exclusive or well-nigh exclusive jurisdiction over the appropriations decisions for the Agency, and that includes both the authorization and the appropriation itself.

Senator PERCY. I get a feeling from the alumni of the CIA and the membership that there is the same sort of spirit that exists in the Senate, an old boy, old girl—let us say old person attitude.

Do you think George Bush, not being an old boy in the intelligence community, is going to have some unusual problems in getting a grasp on this? Can you assist and help him in the transitional process?

Mr. COLBY. When Mr. Bush, at my invitation, came out for a first lunch with some of our senior officers, one of them cut through the discussion at one point and remarked that of course as fellow professionals with me, they were sorry to see me go, but he said, I do not want that to dominate anybody's thinking. We are intelligence professionals here, committed to this work of our Government, and we are going to serve fully whomever the President puts in charge.

I think that they will give him every full loyalty and every full support. From the briefings we have had, the discussions we have had, I have every confidence that Ambassador Bush will do an absolutely splendid job as Director.

Senator PERCY. Mr. Chairman, I would only like to again express—as I have many times before—my appreciation to the Agency for helping me and every other Member of the Senate fulfill our responsibilities. I could not possibly have fulfilled my duties and responsibilities with the limited resources we have in the Senate, without the help of the Agency.

It was one of the first calls that I made when I came to Washington, to go over and have dinner with the Director and the top

staff members. Ever since then, they have been invaluable—in helping us to beat the ABM, not because they took a position, but with facts that enabled us to say that that was an absolutely technological boondoggle. Every single trip that I have taken abroad, the Agency has been in the forefront of helping me.

I see a lot of skeptical faces in this room. I know there are a lot of people who are skeptical—you are a very unpopular Agency at this time. All the more reason that those of us who believe that there is a real function and a real purpose and we could not have a nation without a good intelligence service, should lay it right on the line. There are bad things that we are going to root out, and you have helped do that. There are fine splendid things that must be given full credit.

Many of my colleagues feel that way.

Mr. COLBY: Senator, I would like to express our appreciation to you as a customer of the Agency—you stand as one of our best customers in using the Agency for the intelligence support that it can provide to the Congress in making its decisions, just as we give it to the executive.

It is a pleasure to serve you.

Senator PERCY. As a customer, the price is right. You have not overcharged at all.

Mr. COLBY. Thank you very much.

Senator PERCY. Thank you, Mr. Chairman.

Chairman RIBICOFF. Senator Nunn?

Senator NUNN. Thank you, Mr. Chairman.

I would like to echo Senator Percy's statement about Mr. Colby and the exemplary manner in which he has handled all of these difficulties. I would also like to join in his complimentary remarks about you, Mr. Chairman. I do think you are the perfect person to head this committee.

I am not looking for any additional time by that remark.

Mr. Colby, I have two or three questions

On page 9 of your report in the second paragraph, you say:

A prior security clearance of staff members and termination of employment for disclosure are hardly adequate sanctions to ensure the protection of sensitive intelligence sources which can produce substantial royalties for its disclosure.

I know you chose your words very carefully. These words make me more apprehensive about some of the things that have been going on.

Do you have any meaning that is not apparent here about leaks that may have occurred in the past few years?

Mr. COLBY. We had an extensive legal process against one of our ex-employees which the courts did support, thanks to the fact that we had a secrecy agreement with him, and second, we learned that he planned to publish before he actually published. I am not quite sure how successful we would have been if he had published without our having heard in advance that he was proposing to publish some of our secrets.

My statement regarding inadequate sanction refers to the limited degree of control over former staff members who learn a lot of secrets during their employment and then leave with information in their heads. They have a great deal of information which could in-

deed provide substantial royalties. I am concerned that there is no way to prevent disclosures by these people.

Senator NUNN. The present law requires timely notice of the respective committees that have jurisdiction. I believe there are six. You said there are eight, counting the two select committees.

Do you think that the words "timely notice" are adequate in terms of a new statute that would give the committee jurisdiction? If so, what does "timely notice" mean to you?

Mr. COLBY. "Timely notice" means to us, the day that we are informed that the President has signed the finding, we call up the staffs of the six committees and inform them that we have a finding to report to them at their convenience.

I have done that the next morning with some committees, and I have done it some weeks later with other committees, depending on the committee. We are at their disposal at any time, after that particular notice. We make a point of getting that notice out immediately.

Senator NUNN. If the President were to give you orders now for a new kind of covert activity in some unknown nation, hypothetically, and you had just received that word from the Committee of 40 or the NSC or the President or whomever in normal chain of command what would you think?

Say you received that final go-ahead this morning for implementing a covert plan. What would be your attitude and what would be your action toward the congressional committee, whatever committee might be under the mandate of "timely notice"?

Mr. COLBY. I would require my legislative counsel to call the staff members of the committee this afternoon. Since we are beginning a weekend, I would try to make it today. If we missed them this afternoon, we would try to get them tomorrow, to tell them that we have a finding to report to them under the section 662 of the Foreign Assistance Act. They know exactly what we mean.

We have also arranged that our legislative counsel visit the committees as soon as possible, the next day, to advise the chairman of the country involved. He does not go into further detail at that time. We are then totally at the committee's disposal to give them a full briefing on the operation at any time they wish.

Senator NUNN. Before the committee meets and you give them details, do you feel any compulsion in not implementing the order of the President?

Mr. COLBY. No, I do not.

I feel that if there is an emergency, a crisis that needs to be acted on I can go ahead and act. This was considered in the legislative debate, Senator Nunn, before the adoption of that particular provision. There was a consideration about whether prior notice would be required, and it was dropped from the provision.

Senator NUNN. Mr. Phillips testified yesterday in a statement that I took to mean that in his impression we now have in effect by reason of the leaks and disclosure from the legislative and executive branches within the last eighteen months a de facto moratorium on covert activities.

In other words, his impression was that successful covert activities in the present atmosphere are impossible.

Do you have any observation on that one way or the other?

Mr. COLBY. There are very few covert actions that we reported to the Congress last January as soon as the law was passed, which are continuing. They are not very prominent ones. They are not very politically sensitive ones, but they are going ahead.

During this year, I made certain proposals for covert actions. These were approved and initiated and reported and every one of them has leaked.

I believe it essential, if we face some foreign situation that requires action, to consider the possibility of a leak, but also consider the likelihood that the thing will go badly if we do nothing. We will have to consider a risk factor in deciding what to do.

Senator NUNN. In other words, despite the problems, if you felt that covert activity was essential for the best interests of our Nation today you would still recommend and make every effort under the proper authority to implement it?

Mr. COLBY. I certainly would and have done so.

Senator NUNN. One other question.

I understood—and I do not think this is a part of your prepared remarks—that you do favor an oversight committee without any doubt. I understood you to say that you favored an oversight committee that would be limited to foreign intelligence.

Are you saying that you would not include within this committee's jurisdiction the FBI in their domestic activities?

Mr. COLBY. The domestic intelligence problem, the domestic scene, is quite a different problem from the foreign intelligence area, Senator. Trying to put them both in the same committee might raise more jurisdictional problems than would be necessary.

I limit myself as the spokesman for foreign intelligence, consequently I would leave to the Congress the extent of the jurisdiction. I do speak for only the foreign intelligence action.

Chairman RIBICOFF. To stress this point, would that include, in your estimation, the counterintelligence activities of the FBI in this country? Are they coordinated?

Mr. COLBY. We coordinate, but no, it would not, in my view, include the FBI's counterintelligence activities in this country. I think the exclusive jurisdiction that I referred to would refer to foreign intelligence collection abroad, such activities of the CIA here in America that are related to foreign intelligence collection. There are a few that are perfectly proper. It would also include the foreign intelligence aspects of some of the other agencies in the intelligence community but not include the FBI itself, because that is basically a domestic, internal security focus, their responsibility.

Senator NUNN. Mr. Colby, would you favor statutorially limited terms for the Directors of the CIA and FBI?

You can answer those separately.

Mr. COLBY. I really do not think that it is appropriate for me to talk about the FBI.

Senator NUNN. With respect to the CIA.

Mr. COLBY. With respect to the CIA, I was much flattered by the remark in the Rockefeller Commission Report that the Director's job should be limited to 10 years. I thought that was quite a lot longer

than I anticipated. No Director has been in office for more than 8 years.

I think perhaps it would be an appropriate limitation, yes.

Senator NUNN. Thank you, Mr. Chairman.

Chairman RIBICOFF. Senator Brock?

Senator BROCK. Thank you, Mr. Chairman.

Mr. Colby, I simply echo the sentiments of my colleagues from Illinois and Georgia in my personal respect for you as a man and as a public servant.

Mr. COLBY. Thank you, Senator.

Senator BROCK. I think I might preface this question by admitting an enormous degree of frustration, and frankly anger and disgust, over the recent leaks from the Congress of the United States, and I have particular reference to the actions of the House committee and its printing of a report which I thought there was an agreement—and I think everybody else thought there was an agreement—including the members of the committee with the President with regard to the release of national security information.

I gather that that information has now been leaked in the form of a final report, distinct from the documents.

Mr. COLBY. I do not think they have voted.

Senator BROCK. I do not think they have voted, but the information was in the Washington Post this morning, so it does not really matter, does it?

I wonder how we can guard against that, no matter what our format is. I wonder what we can do.

I think that we can apply rather specific sanctions to staff. I think that is essential. But I do not think this is a staff problem. I may be wrong.

The Constitution very clearly limits the law and its application to the Congress or a Member of Congress. He cannot be held accountable in any other place for words he uses in his official duties.

That is where I see a problem.

I wonder if you would comment in this particular context on the choice, for example, between having a House committee and a Senate committee separately, or a joint committee or the choice Senator Percy mentioned on having both in the appropriations and authorization process.

Mr. COLBY. I go at it with a mathematical approach, Senator Brock. A secret becomes half a secret when two people become aware of it. You can carry on that arithmetical progression from there on.

The fewer members that are on the appropriate oversight, the better. Obviously there has to be a substantial enough body to be representative of the House or the Senate as a whole. I think the idea of limiting the number to a rather smaller number increases a sense of self-discipline about the secrets.

Second, I think that there are some improvements that could be made in the rules of the Houses to stress the importance of secrecy. Then it is up to the Houses to discipline their own Members and there are ways in which that has been done, both in the formal ultimate sense and the informal sense of the relationship among the Members.

I believe there are many countries in the world where the Parliament has members, not just of the loyal opposition, but of a disloyal

opposition, and those Parliaments have worked out systems whereby they continue to do the business of the majority of the Parliament and the majority of the nation, even though there are some disloyal opposition members in those Parliaments.

I do not think we have any disloyal Members of our Congress and the Senate, but I think that the techniques of controlling secrets and controlling a responsible management of the Government are somewhat similar and could be adaptable.

Senator Brock. In essence then, and probably, if I could put words into your mouth, you would prefer—I think you said this in your statement—a joint committee, No. 1, and No. 2, that that committee have both authorization and appropriation responsibilities.

Mr. COLBY. Yes.

Senator Brock. Can I ask you, for my own personal information, to comment or describe for me the understanding that you did have in that particular instance in regard to the committee's final report?

Mr. COLBY. We had a dispute over the publication of certain words in some documents that we had provided to the House committee. I said that those words did have some significance which a careful study by another foreign intelligence service could track back to some specific actions that they had taken.

The committee has cited a reference to this general subject in a published book. That was not my concern. What was in the book was not a matter of concern to me. It was appropriate for that to be in the book. What I was concerned about was a further study of some of the leads that those words gave. Then, by direction of the President, we said we would no longer provide the kind of classified information to the committee that we had been in the process of providing. This led to an impasse between the committee and the Executive. It led finally to a conference between the committee chairman, the House leadership, the President and myself, and in the course of that discussion agreement was reached on procedures whereby if the committee believed that something should be released, and I believed that it should not, the matter would be referred to the President. If he found release to be detrimental to the national security in a formal sense, then the material would not be released, pending further resolution of the constitutional and legal issues involved.

We went through that process with respect to the specific reports a couple of weeks ago, and until this day, the President's certification has been respected by the committee. There have been a few leaks, but nonetheless in a formal sense the committee has respected it.

The committee now contends that that agreement does not apply to the committee's final report. This is just impossible, Senator.

We are not talking about individual documents; we are talking about the information which is contained on the documents, and we are talking about names, and we are talking about groups, and we are talking about funds, we are talking about numbers. Those numbers do not become unclassified by being taken off of one piece of paper and put on another. They are still classified information.

We are at present having a discussion about how to handle that. Our staff has been in consultation with the committee staff in an attempt to narrow the area of disagreement and they are discussing how this is going to work out.

Mr. ROGOVIN. Senator, the issue is one of access. It is a good example of what an oversight committee is going to have to face. The committee obtained complete access with the understanding that when they were going to make any kind of public disclosure there would be this system of consultation. The access took place, then at the end of the line when no more information was sought, the committee concluded that it would be a censorship of its report if they allowed the President to determine that any particular piece of information was detrimental to the national security.

Any future oversight, using this as an example, has to meet this problem, because committees will make reports. It is a constitutional responsibility to inform, and that is where the issue has to be resolved as to how particular material can be made public. Any process that should reflect the coequal nature of the branches of the Government. You should not set up a situation where a slim majority of one committee of one house will declassify a piece of information where the President has said that it will be detrimental to the national interest.

I think it is extremely important that this issue be faced in any oversight legislation.

Mr. COLBY. This is not in any sense an attempt to censor, Senator Brock. We have worked with committees to try to work out phrasings by which things can be said, even critical things can be said, without revealing the details of the specific country, the specific group that is helped, the specific individuals involved.

The overall line we can handle without any trouble. We have done that in our discussions with our ex-employees who wish to write books. We negotiate with them as to, well, if you can refer to this in somewhat more of a general term, please go ahead, but do not reveal this particular detail.

It is that exact technique that we think can be applicable in a relationship with the Congress.

Senator BROCK. The situation would require that if you could not get an agreement, you would go to court and you would get a decision of the constitutional requirement?

Mr. ROGOVIN. We reached an impasse with both the executive and legislative branch. We are talking about absolute positions. In order to be able to move this forward, we have this ultimate resolution that through the subpoena power of the committee, we then see the document and the court would ultimately resolve the question of whether it was classified or not. It was really a recognition that we had gone about as far as we could go without resolving questions of absolute privilege.

Senator BROCK. I think you and the President have been had. Thank you.

Chairman RIBICOFF. Senator Glenn?

Senator GLENN. Thank you, Mr. Chairman.

Mr. Colby, you have been in a most difficult job. I would like to associate myself with the remarks of my colleagues in complimenting you on the way that you have handled this.

Mr. COLBY. Thank you, Senator.

Senator GLENN. I think that we absolutely must have a strong, and if it is found necessary, even an expanded intelligence activity in these

times in which we live. Having said that, we all agree, I am sure, that we want to prevent the mishandling of some intelligence operations and the covert activities.

I think most of the American people and probably all of us in this room agree that we would not condone some of the past operations.

I am concerned that maybe we are putting too much attention on whether we have a joint or a single committee or whatever. We are concerned with organization of an oversight committee here, but I think perhaps that there is a much more basic problem.

We could set up a committee which seemed to be organizationally perfect, and still not be getting to the center of the problem, touching the spot where these decisions are being made. I am concerned that in whatever oversight we set up that really we are overseeing what is important, that decisions are not being made at some different level that involve this Nation internationally and can influence the whole foreign policy.

I am very concerned that we know what we are dealing with, and we are getting to the real sources of the decisions, that we are getting to where they are made. I am not sure that we have approached that yet.

You indicated in your testimony that your authority came only from using Presidential authority, I believe was the word, that he must be kept fully informed.

Just to make a point here of where that decision is made, did every President know of these assassination plans?

Mr. COLBY. The record on that, Senator Glenn, is very murky. One can put up a contention that the President did not know or was protected from the details of the information.

One can also put up a contention that there was a general climate of discussion where he probably did know of it and should have known of it. You cannot prove either case by examining the available evidence.

Senator GLENN. The Committee of 40, did they know?

Mr. COLBY. I believe they did not know of the specific cases we are talking about. Again, it is the difference between a specific, detailed activity and a general grant of authority to go into a general category of activity. Again, that did not get specific enough so that you have records that clearly indicate it.

Senator GLENN. Perhaps those kinds are of a specialized case, maybe they are not as typical as some others.

Let us say Angola, plans to go there: were they approved specifically by the President?

Mr. COLBY. I cannot confirm or deny specifically any present covert activity, Senator Glenn. I will say that any activity that we are conducting at this time or have conducted under my directorship has been discussed with the 40 Committee and has been the result of a Presidential approval.

Senator GLENN. What concerns me here, obviously, is that we could set up an oversight committee, but which turns out to be a facade, a papier mache type approach to this thing, because the American people think, now we are protected, our checks and balances are now working between our executive and legislative branches of

Government, but they really will not be, it will be a charade unless we really get to where these decisions are being made.

I am not sure the Church committee—and I am certain that I am still at sea a little bit about where these decisions are made and what kind of organization or committee structure we should set up to oversee this.

Would you care to comment on that and what, from out of your experience you would advise, what should be our touchstones in the executive branch to make sure we are overseeing what we think we are going to oversee or hope that we will.

Mr. COLBY. The present legislation has one positive feature that requires that the Agency report any activity other than intelligence gathering in a timely fashion. That is a matter of law, and the Agency must do it. My successor must do it.

It has some weaknesses in that it requires us to report to too many committees, but the concept of a responsiveness by the CIA or by anyone else who is engaged in this particular kind of activity is proper. The law requires officials of the Government to respond to the appropriate committees. I would hope that would be a minimum number of committees, because our experience has shown that too many of them means that there are no secrets.

Senator GLENN. I would agree with your statements on the need for secrecy. I think that what has happened in some of these areas has just been abominable. That is one reason that I tend to favor the joint committee approach rather than the single because of the proliferation of people who would know things.

Obviously, from our setup here an oversight function would be much simpler if we could deal with one spot, the Director of Central Intelligence and have full confidence that he, in turn, is fully informed about all DOD operations and NSA and all of the other functions of Government, intelligence-wise.

Do you favor that type, one central location for all of this, coming to the peak of the pyramid here, or do you think it should be kept a little more diversified?

Questions were asked earlier about the FBI and the interrelatedness there, and DOD and the military intelligence area that comes somewhat under you, somewhat under them.

Do you think that we should have one man with that Czar-type responsibility and should there be that deliberation, and should we in our oversight deal with several different areas to see what is going on?

Mr. COLBY. I think there is a clear distinction, as I indicated, between the responsibilities for domestic counterintelligence and internal security in the hands of the FBI and the problems of foreign intelligence. I think it is quite different.

With respect to the relationship with the military, I believe it is very useful to our country that you be able to look to one individual to get an overall look at what I call national intelligence. I think there should be a distinction between national intelligence and what can be called tactical intelligence. For the tactical or departmental intelligence activities, you should look to that particular force or that particular department or to the details of intelligence activities at the local level.

You cannot have a single intelligence Czar responsible for every radar and every destroyer in the Nation. If you have a destroyer, you are going to have a radar. It is properly looked at as a part of the Navy, not as a part of intelligence.

On the other hand, there are military activities that do relate very directly to the national intelligence problems. There the Director should have a view, and does have a view, of those activities. There is full disclosure to the Director and I have, on many occasions, reported on the budgets of these national intelligence activities in great detail.

Senator GLENN. Do you think that throughout the executive branch and throughout all of the different intelligence activities, there is adequate definition of the level that appropriate decisions should be made?

Let us go back to the assassinations. Is it possible for one of your agents someplace—I suppose it would be possible, of course, for someone to make the decision, “yes, it is in the national interest, the best interest,” and this has not been run uphill through the NSC and the appropriate people, and has not been checked with the President—do we have adequate checks to make sure that these decisions are not being made by someone who might be quite misguided at his level as to what is in the national interest?

I am just trying to get this whole picture.

Mr. COLBY. We have some very specific directives and instructions. We have a law that requires that anything other than intelligence-gathering only be done if the President certifies it as important to the national security and it is reported to the committees of the Congress. This is known throughout our structure, that no such activity can be undertaken without that kind of approval.

We have an excellent communications system that keeps us in very close contact with our people everywhere in the world, and we have the discipline of the organization itself, a control through the organization. There have been occasions in the past in which it broke down. The Senate select committee looked into the fact that there was a small amount of toxin that was left over and not found and was in an old storeroom. It is possible for that sort of thing to happen in any large institution. But I believe our control structure will stand up to any other terms of its effectiveness.

Senator GLENN. Mr. Chairman, my time is up. I would just like to make one short statement here.

I think that before we make any decision of whether we have a joint or single committee or whatever, we really have to pin down what it is we are going to oversee first, so we know what the organization is and what contacts the oversight committee would develop and what the committee staff would be set up to do and so on.

I think that really has to be closely defined. Without knowing some of these things, I do not know whether I could, in good conscience, vote for a single or a joint committee now.

We have to define the jobs they are going to do. To really define that, we are going to have to home in on who their contacts are going to be, and what levels they are going to oversee. Is it just one spot,

just the President or the CIA, or are we going to be required to do a dozen agency checks to perform our oversight function.

Unless we define that, and define it very closely, it seems to me that any committee structure whatever, one, two, three or half a dozen committees, are going to do nothing but be a window-dressing that will mislead the American people more than lead them.

Chairman RIBICOFF. My response to that as chairman, Senator Glenn, is that we will have some 25 witnesses. This is exactly what we are exploring in these hearings.

As chairman, I entered these meetings with an open mind, without any preconceived ideas seeking guidance from my fellow members on this committee, the executive branch, and all of those in this country who have something to offer.

The Church committee will not have a bill before us for the next week. We will have their point of view.

You, Mr. Colby, made the statement that the sooner this committee is established, the better. We will welcome, of course, as soon as possible, the input from the executive branch.

This committee will give complete consideration and respect to the views of the President of the United States as well as the Church committee. The sooner we have your input, and the Church committee's, the better for us. We agree, the sooner the better. And, by having the cooperation of the membership of this committee, these hearings are going forward day after day.

Once we complete the hearing, we will immediately go toward markup. Senator Glenn, you are a very valuable and thoughtful member of this committee. Any ideas you have will certainly be given the most careful consideration.

Senator GLENN. Maybe what I just outlined is the first job of the new committee. We have to determine where to go. Maybe that is the job of the oversight committee which we will set up.

Senator NUNN. One observation, Mr. Chairman, if you will permit it.

I would like to solve all of these organizational problems of intelligence while we go. I believe it is one of the very purposes of the oversight committee.

Someone is going to have to spend hours and hours to get all of the pegs in the right hole, or to find out where they are. I do not know if we can take that on. I certainly think we ought to learn as much about it as we can.

I believe our hope is this oversight committee can undertake a lot of that themselves in their deliberations with the intelligence community and with the executive branch. I believe that if we are looking for a simple solution, we are going to be very disappointed.

Chairman RIBICOFF. Senator Weicker?

Senator WEICKER. Thank you, Mr. Chairman.

Would you agree with me that really the CIA will not be able to operate efficiently until we have an oversight committee in place? I think it is essential, in other words, in restoring confidence and allow you fellows to operate.

Mr. COLBY. I think it would be a substantial step ahead, Senator Weicker.

Senator WEICKER. Let me say this.

I think that both of us appreciate the necessity to go ahead and stop the pendulum in mid-swing. If indeed you are spending 122 percent of your time on the Hill—

Mr. COLBY. That was my associate's number.

Senator WEICKER. It is probably a good figure. It illustrates the problem as a reaction to the zero percent that used to be spent on the Hill. That is the problem, to try to bring this thing back into some sort of perspective.

I am troubled as to where we go from here, having wrestled with the concept of oversight and having wanted it for 3 years. Other Members of this body, the Majority Leader stated yesterday, have wanted it for longer than that.

I think, if Senator Mansfield's proposals had been put into effect many years ago, we would not have gone through this mess we are going through now.

There is a great deal of difference between the rhetoric on the Hill and the deeds.

This is probably going to be measured rather carefully by the American people in the weeks ahead.

I will present to you one of the areas that I am truly troubled about and I want your reaction. I have a vote coming up next week on the confirmation of the CIA Director. Both of us know George Bush to be a fine man; there is no argument, both in the sense of his qualities of mind and heart. So let us leave George Bush out of this, it has nothing to do with him as an individual.

My question, the question I have to ask myself, and I would like to have your reaction, while we are trying to reestablish confidence in this Agency, which not only holds for the present, but obviously for the future—should anyone so closely identified with politics, Democrat or Republican, be the head of that Agency?

And I want you to eliminate the individual, George Bush, from your mind. I know his dad, I have a great affection for his family and I respect him.

There is a problem. This body is going around alerting the American people. We want good intelligence and we want to reestablish confidence, and right out of the box we are going to do something that is going to come under question.

I would just like to have your professional opinion as to whether anyone closely identified with politics should head up this Agency.

Mr. COLBY. I started from a slightly different starting point, Senator Weicker. Although I am a professional and grew out of the profession, I have many times expressed my belief that I think it is somewhat better that a nonprofessional be the head of the Agency and be supported by the professionals in it, somewhat in the same fashion that the head of the Army, Defense Department, Navy and so forth are appointees, civilian appointees, outside of the profession itself and the profession supports and performs under that kind of disinterested guidance that an outsider poses.

Once you say that, then the question is, obviously you do not want a partisan political figure in the post.

I think that Mr. Bush has given every indication and every assurance that he intends to avoid any such situation. I am sure there will

be a lot of attention addressed to this by critics of the CIA in the future, and any step in that direction would be immediately highlighted. Consequently, Ambassador Bush would make every effort to keep himself independent of politics.

There has been a major letter by the President withdrawing his name from one particular political potential. I think he has given every indication that he intends to perform in an independent manner, befitting this particular Agency.

Senator WEICKER. Again, I want to make clear that George Bush is not the subject matter of my question. It is the fact that we are trying to restore confidence in this Agency.

I have to confess to you, do you feel that the former chairman of one of the major political parties, either one, Democratic or Republican, is going to be viewed by the American public as bringing the right degree of objectivity to a job that I think everybody realizes is one in which they want to have objectivity.

Mr. COLBY. Of course, I do not believe that it is possible to answer that question without referring to the individuals who have held that post. There are very few of those posts, and very few of those individuals. I repeat what I said before. I do not believe that a partisan political figure should manage the Agency. In other words, it should not be managed as a partisan political tool of any administration. I have expressed my confidence in Ambassador Bush and he has given every assurance that he will avoid that. Therefore, I think the background of whether someone did something once is not the touchstone and determinant of the matter.

Senator WEICKER. We have had testimony by others, not only on this committee, but in other committees, that the Attorney General of the United States should not be a partisan political figure, even though that has been the case. The Democrats are the ones that come to mind on this score.

I wonder, if in this day and age, the American public is not looking for something, or for someone, quite frankly, very extraordinary to head the Justice systems, the FBI, CIA, or the Department of Justice.

I am not so sure that you answered my question.

Mr. COLBY. I am not so sure that I could.

Senator WEICKER. I understand your position. You are probably having difficulty dividing the man, in this case George Bush, from the position, but we are dealing—the problem is, Mr. Colby, that both you and I understand that we have to have intelligence, we have to have the American people believing in their intelligence agency. That is what is at stake right here, whether this thing is going to survive or be washed out at sea. That is why it requires the most extraordinary measure.

Mr. COLBY. I do not think that it is appropriate for me to discuss my successor, Senator Weicker. I stated my position, as accurately as I can.

Senator WEICKER. One last question. I wish I had greater time to get into it, but this great chart that we have up here, next to the wall indicates a chain of command. I would like, if I could, put names to this.

Director Colby, when did you take over as the head of CIA?

Mr. COLBY. I was sworn in in September 1973. Mr. Schlesinger left in May, and I essentially ran it in between.

Senator WEICKER. Point No. 2, the head of the National Security Council, am I correct in assuming that that has been Dr. Kissinger?

Mr. COLBY. The Chairman is the President but the Executive Secretary of it and the manager of the staff as distinct from the Council is the Assistant to the President for National Security Affairs, which up to a few months ago was Dr. Kissinger.

Senator WEICKER. Do you think it is advisable, as a practical matter, that a line run from the Secretary of State up to the National Security Council that way? Do you think that is a particularly good situation to have, the Secretary of State being, for all practical intents and purposes, the head of the National Security Council?

Mr. COLBY. We are talking about the President and the way he runs his particular office with the people that he has around him. I think organizations should reflect the people and the demands and the political situations. I do not think they are immutable. I think they are subject to change with new personalities and new relationships that come up between people.

Senator WEICKER. Aside from whatever oversight the Congress can give, however, the National Security Council, in effect, is the executive oversight relative to the CIA activities, is it not?

Mr. COLBY. Under the National Security Act, the CIA reports to the National Security Council. The NSC consists of the President, Vice President, Secretary of State, Secretary of Defense—

Senator WEICKER. May I have 1 more minute, Mr. Chairman?

Chairman RUBINOFF. There is a vote, and we still have Senator Javits. Go ahead.

Senator JAVITS. I yield.

Senator WEICKER. Thank you, Mr. Chairman.

The only thing that concerns me is the testimony of James Gardner from the State Department was that between 1973 and 1974, the 40 covert operations by the CIA were approved by the special Forty Committee, but apparently the committee never met. It was strictly a telephone type of operation, with Secretary of State Kissinger not actually having face to face dialogue.

Mr. COLBY. At that time Senator Weicker, we were very sharply reducing the numbers of those operations. By 1973 only about 5 percent of our budget was involved in that kind of operation. Most of those 40 Committee decisions were 6-month or yearly status reports on ongoing activities. They required no great consideration, no great policy questions were involved. There were some meetings of the 40 Committee on one very important program which was not actually a covert action program. It was an intelligence collection program, but it was a very significant and delicate one. We did meet and discuss that and argued about it, but most of it was not of the level of importance, the individual actions were not of the level of importance that required actual debate and discussion.

Senator WEICKER. Thank you, Mr. Chairman.

Mr. COLBY. I might add that the more important decisions that have been made this year have been the subject of a considerable number of 40 Committee discussions.

Senator JAVITS. Mr. Colby, I would like to join my colleagues in my expression of confidence in you and my appreciation as a U.S. Senator from New York for the job that you have done.

I have had a lot of experience with you beginning with the job in Vietnam.

Mr. COLBY. Thank you very much.

Senator JAVITS. I take great pleasure in being able to say that.

One of my colleagues has asked me to raise an issue with you which I would like to raise.

Senator Case yesterday in a statement said, with respect to news leaks—I think he was talking particularly about the leak relating to Italian political parties—he said, “it is a hard thing to prove, but I have a powerful suspicion that they”—meaning the CIA—“are leaking these things themselves, then they can blame it on Congress you see and discredit our disclosure requirements.”

Then he went on to say, the agencies have not been happy with our requirements that they brief us, and so on.

A two-part question, one: is there any truth to that as far as the CIA is concerned, or to your knowledge, as to any other executive department agency; and second, what precautions do you take in the agencies against such duplicity.

Mr. COLBY. Senator Javits, I flatly deny that the CIA leaked information for that kind of a purpose. The CIA was trying to conduct covert actions. We have held these secrets for a number of months. Most of these exposures came out of some combination of testimony, an event abroad which brought the matter to public attention, and the energetic efforts of our news colleagues and journalists in the country who pick up little bits and pieces and add them up to a total picture.

There was certainly no conscious effort by CIA.

I must state again, however, that our controls, our legal controls over our own employees are not those they should be to give us proper control.

We conduct a number of activities within the Agency limiting the number of people who know about these matters. Large numbers of people in the Agency know nothing about these matters and are deliberately kept ignorant of them for security purposes, but a certain number do have to know about them. We have no indication of dissatisfaction in the Agency with the programs we are undertaking. As a matter of fact, I believe that the Agency has done a splendid job of maintaining its ability to carry out intelligence operations, and also to carry out a very energetic and imaginative program in the covert action field when this has been properly approved.

Senator JAVITS. I therefore take it that that flat denial means that as far as you know, the CIA has not leaked anything for any purpose?

Mr. COLBY. The CIA itself has not leaked. I absolutely and flatly deny that the Agency has ever leaked information so that Congress' ability to keep secrets, or that the reporting requirements of section 662 of the Foreign Assistance Act, would be discredited. Unfortunately, I cannot say that no individual CIA employee has ever leaked information. As I have mentioned, a stronger law against disclosures is needed.

Senator JAVITS. Have you already given us, or can you give us, your suggestions for the legal tightening up that you feel is desirable for the CIA?

Mr. COLBY. I have submitted some recommendations for legislation and we have worked these through the Justice Department, and they are about to be sent by the Office of Management and Budget to the Congress. The legislation will give us criminal sanctions over the disclosure of sources and methods by those who have voluntarily undertaken the obligation to keep those secret.

I believe that the specifics of the recommendation are fully compatible with the first amendment of our Constitution and are also necessary to protect the liberties of Americans.

Senator JAVITS. Thank you, I am very pleased with the latter assertion, and we shall await that.

One other question, since we all have to vote.

There has been a lot of attention to what the CIA has done covertly and who it tells about it and why; what responsibility there is in the President and the National Security Council, et cetera.

I have a totally different question. What about the right of the Congress to know, in order to legislate? What is your appraisal, as now our retiring Director of the CIA of what we have to know to legislate intelligently?

I am now a member of all kinds of committees that need to know what you are discovering covertly or overtly in order to deal intelligently with a wide range of issues, whether it is Angola or U.S. trade policy or the Panama Canal.

Do you have any recommendations for us on that?

Mr. COLBY. We have a procedure, Senator Javits, by which an Agency spokesman briefs on request on any subject in the world, using the most sensitive information available to us.

I spent yesterday with a House committee discussing some of the most sensitive details of our knowledge of one particular foreign situation. I also developed a special current intelligence publication for the Congress some months ago. This was made available to relevant committees of the Congress in the hope that the individual Members will find it convenient to look through the publication quickly and profit from the kind of intelligence we collect.

Senator JAVITS. There is nothing you recommend which would strike out that requirement of having the Director or authorized representatives coming to brief committees or individuals as to what they ought to know from the legislative point of view?

Mr. COLBY. Absolutely not, Senator. I believe we Americans share our decisionmaking. Part of it is made in the executive branch; part of it also involves the Congress. In order for those decisions, those national decisions, to be the best possible, we have to provide the substance of the intelligence information to the Congress to the extent that we possibly can.

Senator JAVITS. Nothing we do in oversight committee legislation or anything else ought to strike out that responsibility and that right on our part in the Congress?

Mr. COLBY. No.

I would only ask again that the self-discipline in the Congress itself and the control of its staff members be such that sensitive information can be protected. In addition to operational information, substantive assessments may also require protection.

Senator JAVITS. I think that is one of the big things we need to deal with here. We have to get very much more straight than we have been.

There is plenty of law and plenty of rules and lots of efforts, but, question, what are we willing to do about ourselves? That is one that Congress has to answer.

Thank you.

Mr. COLBY. Thank you.

Chairman RIBICOFF. Thank you very much. Mr. Colby, for being with us today. Your testimony has been valuable.

The committee will be in recess until 12:15, when we will hear from Mr. Bundy.

[A brief recess was taken.]

Chairman RIBICOFF. The committee will be in order.

I am so pleased that Mr. McGeorge Bundy has done us the honor to be with us today. I have known Mr. Bundy and have worked with him for many years, and the depth of his intelligence in every respect, and his experience should be very helpful to this committee, and I do appreciate his taking time from his very busy schedule to give us the benefit of his thinking.

Senator PERCY. May I join you in that, Mr. Chairman? We are very honored indeed and very much appreciate your being here, Mr. Bundy.

Chairman RIBICOFF. Would you proceed as you would like?

**TESTIMONY OF McGEORGE BUNDY, FORMER SPECIAL ASSISTANT
TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS**

Mr. BUNDY. Mr. Chairman, Senator Percy, it is an honor to respond to your invitation to come. I have a substantial prepared statement.

In view of the hour and in view of the familiarity with which you both have with so many of these issues, perhaps it would be most useful if I summarized my main opinions and suggestions, but I would like to begin here with two caveats: first, I have been out of Government for almost 10 years, except for some specialized consultations in the later years as counsel to the Johnson administration. Second, I would like to make very clear on the record that during that 10 years I have seen to it that there was no connection whatsoever between any intelligence agency and the Ford Foundation. This point is important, because sometimes there are false charges in these areas in foreign countries.

Chairman RIBICOFF. May I say that your entire statement will go into the record as if read, if you are going to summarize.

Mr. BUNDY. Thank you.

I come as a private citizen, and I can offer you four or five general comments.

First, I do believe that we need a new committee. I think it would be better if it would be a single joint committee. I think that as long as there is adequate rotation in such a committee you can avoid the danger that it would be in any sense co-opted. I think in the past interests of the Congress as a whole, both Houses have been well-served by such joint committees, and as we heard from Mr. Colby this morning, it is always a saving of precious time and energy when

one can focus the responsibilities, the reporting and accountability, in as few committees as possible.

The need for the committee is clear, I am sure, to members of this committee.

There is a crisis of confidence in the quality, the integrity, and even the discipline of the intelligence community.

There is need for a basic review of the hazy, statutory underpinnings of major elements of the intelligence community.

There is a need to cut back from the makeshift arrangements under which the committees are receiving incomplete and fragmentary information. These arrangements do not seem to me to really permit effective oversight, and they do seem to lead to leaks.

Finally, in the absence of a new committee, we simply will continue to have a large and important section of our national Government which does not appear to have—I emphasize the word “appear” really—a serious or sustained relationship of accountability to Congress. The less formal methods that were found acceptable in earlier years have worn out. I do not believe they are any longer effective, either as an instrument of congressional oversight or as a means for providing the intelligence community before the public with the legitimacy that comes from properly informed congressional supervision.

The next question I come to is one of jurisdiction.

I think the answer here is reasonably clear. I think the principal mandate of a new committee should be to concern itself directly and closely with the work of the Central Intelligence Agency and the National Security Agency, and only generally and less directly with other parts of the intelligence community such as those to be found in the Justice and Defense Departments.

Those departments have very important responsibilities that do relate to intelligence, but I think it would be a mistake to undercut the general responsibilities and powers of the committees now concerned with defense and justice, in this specific case, the FBI, for example.

One of the great problems in that agency over the years has been its very high degree of autonomy, even within the Justice Department, and the incomplete supervision which it has had from Attorneys General and even Presidents.

When you break out a part of its work, or if you did, and put it under another special select committee rather than leaving it where Justice as a whole is accountable and responsible, I think you might inadvertently increase the tendency that has existed in that part of Government in the past to regard itself as a thing apart.

Anyway, in its years the new committee will have plenty to do if its primary attention is directed to CIA and NSA. I do not mean at all that it should not have a general license to concern itself with the boundary lines of intelligence, what is general intelligence and what is strictly tactical intelligence; what is general intelligence and what is strictly counterintelligence or internal security.

There is nothing new about those hazy boundary lines between committees.

I would emphasize my view that the National Security Agency should be included, however, because while it is administered under the Defense Department, it has always been its mission to serve the in-

telligence community as a whole. Indeed, I think the main outlines of its mission are really determined by the U.S. Intelligence Board, or at least it used to be so.

So in a general way, I think that it would be reasonable to describe the jurisdiction of the new committee as roughly the same as that of the Director of Central Intelligence on the executive side—immediate responsibility for the CIA and for defining the missions of the National Security Agency, and a more general responsibility for having views, opinions, and being informed about the relative right, responsibilities and roles of the numerous intelligence agencies which the Government has.

The third point I would like to make is that I think it is perhaps a mistake to begin by thinking that this committee will be really all that different from other standing committees in the field of national security. There are some special complexities—I will come back to the hardest one, which I think is covert political action.

I think it is probably helpful to begin by recognizing that most of the work of such a committee would not be essentially different from that of other committees that have parallel responsibilities. I do not believe, for example, that it is essential for the main elements of intelligence budgets or of authorizations or appropriations to be secret.

The size and shape of our intelligence effort now is probably better known to our adversaries than to us. I think that it would help if there could be better understanding of just what the intelligence budgets are.

Moreover, in spite of conspicuous and lamentable abuses, the bulk of what CIA and NSA do, even where specific techniques and results may be deeply secret, is work which a new committee could readily understand and monitor in a relatively open way. That is true, as you have been saying this morning, of collection and analysis of information. It is true also of the processes by which intelligence is put together and made available, both to the executive branch and to the Congress.

Lots of this information does have aspects which are genuinely and deeply sensitive. There is nothing in that that is intrinsically more difficult than the parallel problem of sensitivity and classification which does arise in diplomacy for the State Department and Defense, with weapons systems and in the field of nuclear energy.

Just as it is possible to discuss weapons systems without compromising critical detail of technical design, and our defense posture without discussing the details of contingency planning, I believe that it is possible to consider general questions of intelligence collection without revealing sensitive capabilities, whether technical or human. There are many real secrets in the field of technical intelligence, as there are also in the work of secret agents. I do not think it is beyond the skill of the committee with a qualified staff to address the task of oversight while respecting those real secrets.

It is obvious that a member of the committee could demand some specific information—"What is the name of your agent in this or that foreign country?"—which it would be both dangerous and unnecessary for them to have. I myself think that the record of congressional committees does not justify any fear that the committee as a whole would wish to do that, and if something like that did

occur, then I would expect that the general opinion of Congress would support a properly explained resistance by the executive branch.

So far, we are really not talking about things that are all that different from what Armed Services does, or Foreign Relations does, or at least what those committees do when they do not encounter a particular resistance at a particular moment.

Then, I think we can simplify the problem further by noting that some of the matters which have had most attention in recent years will not be on the agenda. Assassination plotting, already forbidden with the Agency some years ago, should certainly be explicitly prohibited by statute simply to reinforce the obvious and general judgment that it has no place in the work of the intelligence community.

In the same way, it should not be hard to reinforce existing statutes which have been violated in such instances as the massive surveillance of the U.S. mails.

Then there is a third and larger kind of thing, which there has been a lot about in the news lately, which I do not think would be a part of the secret work of any new committee, that is large military and paramilitary operations like the one recently undertaken in Angola.

The simple truth is that it is no longer possible to conduct such operations on an unacknowledged basis, so they should no longer be handled, either here or in the executive branch, as if they are really covert. They should be defended and explained, if they occur at all, by the most senior officials of the executive branch in the same way that those officials are expected to explain and defend an open use of the Armed Forces or a program of military assistance.

I, myself, think that much of the current tension between the executive branch and the Congress derives from a failure at the other end of town to recognize that times have changed with respect to large scale covert operations abroad.

I am sorry Mr. Colby is gone. I had a chance to argue with him a little before he left.

Only last week Mr. Colby asserted his belief that the U.S. Government needs an ability to conduct large, unattributed, unadmitted operations. The fact is, in 1976, it is just wrong to suppose that there is any such animal.

There have been such things in the past, but not now. The whole environment that the U.S. Government now operates in is such that it is quite simply inconceivable that a large operation can remain unattributed for any significant length of time at all.

Moreover, it is a mistake to attribute the difficulty here primarily to recent requirements for reporting to congressional committees. Its real cause is much deeper; it is the breakdown of the broad political consensus which made it possible, 10 or 15 years ago, for the CIA to conduct such large operations, in the face of widespread knowledge of their existence, without any admission or explanation from the U.S. Government.

Let me offer you here—a single, striking illustration of the difference between then and now. In recent months, there has been a lot of attention given to the fact that the Kennedy administration in 1962 and 1963, even after the Bay of Pigs, maintained a large scale clandestine effort against the Castro regime in Cuba. There is no question

that this happened, and to many it must appear that something is now being revealed which was successfully kept secret from Congress, the public, and the Press at the time.

Nothing could be further from the truth. What actually happened was the existence of this effort was widely known, and that in the climate of the time, the major media and the Congress made no effort whatever to expose it in detail. Instead, they took it for granted.

A single newspaper column of the time will make my point. Then as now one of the most widely read and authoritative reporters in the country was James Reston. In the spring of 1963, after the Bay of Pigs and even after the missile crisis, there was a sharp flurry of criticism of President Kennedy's policy toward Cuba on the ground that it was not strong enough. Mr. Reston commented thoughtfully on the President's problem in a column whose full text I offer as an annex to my remarks. Let me read here just a few sentences, as they appeared in the Sunday New York Times of April 21, 1963:

Try as he may, he [President Kennedy] cannot satisfy his critics, and for a number of reasons.

First, he is engaged in a subversive war there that cannot be discussed officially in any detail. There are a great many anti-Castro patriots in the hills on that island who are being supplied in the night by various ingenious methods, but this is not the kind of thing that can be talked about openly * * *

All this gives a negative cast to the President's Cuban policy * * * other than saying he is for 'isolating' Cuba, he cannot talk much about how this is being done, and the net of it gives the impression of a policy of ineffective half-measures.

* * * even many of the American newspaper editors who have been in Washington recently reflected impatience with the policy of restraint.

The column winds up quoting the President's defense of his policy of restraint and its last sentence is:

But he could not tell the whole story, and in the end he did not quite quell the instinct for action.

There are lots of morals in this, but let us note, simply that a reporter of the first rank noted quite emphatically that a war was being carried on that could not be discussed by the press, and the major press and the Congress paid no attention. There was no hue-and-cry to get the details out; there was no thunder of indignation from the Senate or from the New York Times itself.

The only problem was the one Mr. Reston correctly reported: since Mr. Kennedy could not discuss his covert actions, he was forced to leave the field free to the critics of his apparent inaction. I ask you simply to contrast this record with what would happen today if a similar "revelation" were to be made about a similar effort by a reporter of similar standing.

Senator Ribicoff. Mr. Bundy, I will take part of my 5 minutes at that point.

This great dilemma concerning the President's activities that he could not disclose publicly—were they disclosed to any Members of Congress?

Mr. BUNDY. They were disclosed in a general way, I suspect, by the Director of Central Intelligence to individuals in the then-informal processes of oversight.

My point, I think, would be, Senator Ribicoff, if Mr. Reston is reporting it in the New York Times in a Sunday column and the

Congress does not follow up with a question, the attitude in the Congress must have been different from what it is now.

Chairman RIBICOFF. Thank you.

Mr. BUNDT. What has happened in the meantime is that the major premise that permitted large-scale unadmitted action, in Cuba and elsewhere, has disappeared. There is no consensus now in favor of such actions, not even in the Caribbean; instead, there is a great deal of sentiment against them, and a deep conviction, in large parts of the Congress and the press, that there should be constant vigilance against and detailed revelation of, all such activities. If we needed a current example, we have had it in Angola. It is just not possible there—or anywhere else—to have “large, unattributed, unadmitted operations.” Such operations require a “benign neglect” from Congress and the press which neither will grant today.

I do not wish to be misunderstood as nostalgia for the good old days, but I do want to note my belief that one frequent complaint against such CIA operations is almost wholly unjustified: I do not believe that there is any major case in which covert operations by themselves have been the cause of a later and heavier involvement. That was not the case in Vietnam, where visible and heavily reported political and military involvement were always much more important than the role of the CIA. That was not the case in Cuba, or in any part of Africa.

The present and decisive objection to those covert operations is not that they drag the country deeply into things it would otherwise stay out of. It is simply that they are impossible. They will not stay unattributed or unacknowledged. Since they are impossible, and since fear of them is widespread and real, they should be ruled out.

If such large-scale covert operations are not plainly and credibly forewarned by the administration, then they should be prevented by Congress. Any such military and paramilitary operations should be governed by the open processes parallel to those that Congress applies to the deployment of U.S. Armed Forces and the provisions of military assistance.

We have now dealt, though much too briefly, with most of what will—and what will not—be on the agenda of the new committee.

The only truly difficult area which remains is that of “covert action” which really should remain secret if undertaken at all. Most of this activity, most of the time, involves relatively small individual actions, often intimately related to the collection of intelligence.

Incidentally, that raises the point that the new committee will have to study the distinction that is made so often between collection of intelligence as a relatively simple matter and covert political action. It is a distinction that will not stand very close analysis, because a lot of what is undertaken in the name of the collection of intelligence can have very important political implications, and vice versa.

The committee will probably not wish to know details of such specific small actions, but it will wish to know in a general way how much of this sort of thing there is, and what its purposes and consequences are. It should, I think, keep a constant eye out for the danger that an activity which seems desirable for an immediate purpose may have side effects that outweigh its value. Questions of this sort arise with special urgency in the field of covert propaganda activity. It is

very dangerous to spread "disinformation," for example, when one of its innocent consumers may be the American public.

Moreover, when American intelligence activities, even small ones, become an important part of the political relations between the United States and another country, it is the purpose and shape of these political relations which should most occupy the Congress, and the basic inquiry into such policy issues should probably take place not in the intelligence committee, but in a committee or subcommittee directly concerned with foreign affairs as such.

It seems to me that the new committee should have the ways and means of informing itself on the general levels of intelligence activity in such a way as to know where there is a question of foreign policy that may not have had proper debate.

Let me now turn specifically to the question of covert political operations. I have to tell you that I am really not too clear cut about how to deal with this. I suspect that the committee and the executive branch will have to live with each other and learn as they go. The problems are so hard, indeed, that it is tempting to reach a conclusion that actions of this sort simply should not be undertaken, at least for a time. While they do not have the innately high visibility that attaches to military and paramilitary activities, they are much harder to conduct in true secrecy than they used to be, and in cases where the damage done by revelation of the effort would clearly exceed any value it might have, it would seem to me wise current policy for the administration to stay away from such activities.

But in the long run I believe it would be unwise to assume that there will be no future cases in which we will wish to give political and financial support to friends abroad for reasons similar to those that can lead to open programs of military and economic assistance, and in some of these cases, it could be important that the sources of such financial support be kept secret.

In the current world situation, such cases are not as frequent as they were 25 years ago, but I think it would be imprudent to take it for granted that no such need will arise in the future.

If, however, we assume that major operations of this sort can safely be omitted in the immediate future, while a new committee is developing its staff, its work processes, and its relationships with other committees and with the executive branch, then there will be time for the new committee to develop its own ways and means of reviewing covert political action.

No proposal for this process that I have heard so far seems to me wholly satisfactory, and I think we should recognize that there is an inherent difficulty here. A truly covert operation, one the very existence of which is supposed to be secret, cannot by definition be openly monitored.

You can talk about hydrogen bombs without talking about how they are constructed, but you cannot talk about political support to a given political party without talking about it. This kind of secret is different from those that are dealt with routinely in other committees. I do not think that this difficulty can be readily resolved by statutory language. I myself do not think it is at all clear that the new committee will find it wise to insist on advance knowledge of all such actions.

Efforts to depend on the consciences of individual Members of Congress seems to me to have great weaknesses. If every Senator and Representative is free to follow his own judgment, then secrecy could never be assured, and the only alternative really open to the executive branch is not to undertake such activity. If that is what Congress wants, then I think it ought to say so.

Another method recently proposed is that when there is a dispute about keeping such a matter secret, the issue should be resolved by a secret session of the whole Senate.

I do not like to say this, but I do not think that is a way of deciding which way to go. It is only a way of deciding against secrecy.

It seems to me obvious that in 1976—this is not a criticism of any individual Member or of the Senate as a whole—but in the environment of 1976 I think anything discussed among 100 Senators is not any longer really covert, and I doubt that those who support this proposal are so naive as to believe otherwise.

It appears to me that in proposing this appellate process, one is in fact proposing a veto power for any new committee. A mere threat to appeal to the full Senate would be a way of ending any action which truly depended on secrecy for success.

Should there be such a veto power, and, if so, what standards should be followed?

On the first question, I do not believe we now know the answer, but on the matter of standards, I think we can do better.

First, we can ask just how any proposed operation or one which is going into action relates to a publicly recognized and generally approved policy of the United States. If there is no such relationship, I think the case against any operation becomes very strong, because in that situation, the operation will often be an effort to achieve some policy objective without the necessity of explaining and defending it to Congress and to the public.

This tendency, which has been evident in recent years, should be steadily and strenuously resisted.

For the same reason, the question should always be asked whether in reality the proposed operation requires secrecy for international reasons, which can be legitimate, rather than domestic reasons, which are not.

Third, the committee should ask the same operational questions that the executive branch should be asking. Why is the operation needed? What chance is there that it will accomplish the desired results? What are the costs, the implications of failure, the penalties of disclosure?

It can be argued that requiring all of this puts a heavy restraint on the President of his chief advisers, and that is partly true, but I believe that in any case where there was a clear-cut, open consensus on an urgent need for action, we could expect the review and judgment of the committee to be less burdensome than may now appear in the atmosphere of today.

In the meantime, the present lack of public confidence in our covert activities demands the kind of oversight we have been discussing.

Let me just wind up, Mr. Chairman; by saying that in saying all of this, I would like to associate myself with those who believe that on balance the record of the CIA is one of which neither the Agency nor the country needs to be ashamed.

There have been abuses. There have been failures of supervision within the Agency and in the White House, and not only in recent years. It is also true that energetic officers in any service, perhaps especially in secret services, press beyond their orders.

It really is true that in the nature of things, the achievements of the intelligence community are less known than its failures. Its general good discipline is less noticed than its occasional irresponsibility and its usually cool and careful estimates of international reality are less noticed than the wild opinions of its occasional zealots.

In my experience, the American intelligence community has been generally dedicated, skilled, and loyal to the values of our free society.

A new committee is needed, in very large part, to help the country to regain a reasonable confidence that this is so.

Thank you, Mr. Chairman.

Chairman RUBINOFF. Thank you very much for your valuable testimony.

Mr. Bundy, you were Special Assistant to the President for National Security between 1961 and 1966.

Yesterday, Dean Rusk, whom you worked with so closely and for whom I know you have the highest respect and affection, testified that it was only recently that he became aware that there were many intelligence operations that took place during his tenure as Secretary of State of which he was not aware.

How did that come about, or how does that come about?

Mr. BUNDY. I did not hear Mr. Rusk's testimony. I am not sure which particular episodes he is talking about.

Chairman RUBINOFF. I was careful. I was not going to ask him.

Mr. BUNDY. The two areas that I have observed myself, both in the press and in testimony in other committees that seem to me to be striking examples of things I know I did not know about, and I know that the predecessor committee of the 40 Committee did not know about, were assassination attempts and surveillance of the mails. Surveillance of the mails was not brought before us because, I believe, it was classified as counterintelligence. Most counterintelligence matters did not ordinarily come before that committee, at least in our time.

I think there was no justification for failure to report and get approval for an actual attempt at assassination.

Beyond that, there is another difficulty that occurred in the period. I do not want to assess blame retrospectively, but the staffing of that committee historically has been very limited, just as the staffing of intelligence oversight on the Hill has been very limited.

If you do not have the proper staff to get behind the paper memorandum or the oral briefing on a particular proposal and to follow up on what actually has been done on that proposal, there can be quite a difference between what you think you approved and what turns out to happen in the long run.

That is not a matter of a runaway agency; it is the normal difficulty of staffwork to keep control of an interpretation of a policy decision. That is the requirement everywhere.

Where you have covert operations and you have a requirement of secrecy, you have difficulty in maintaining that kind of sustained oversight.

Chairman RUBICOFF. What would you do with all of those boxes to eliminate such a lapse? After all, the President and the National Security Council—

Mr. BUNDY. The Secretary of State, of course, is represented. He sits himself on the National Security Council. He is represented on the 40 Committee, which is the principal committee for covert operations.

I do not think that there is any substitute for a committee process for any such operations. As I say, it is possible to strengthen the staff processing and to strengthen the internal discipline as Mr. Colby was saying himself, of the Central Intelligence Agency.

The boxes are a little bit misleading in the sense that the Council and those committees also include representatives of the Secretaries, having line authorities over on the left-hand side.

Chairman RUBICOFF. Let me ask you, I gather from your testimony that you believe that there is far more secrecy about the activities of the CIA than are necessary?

Mr. BUNDY. That is right.

Chairman RUBICOFF. Because operations like Angola are of such a nature that if you cannot keep it secret, you will have to start from the beginning to get a policy decision from the Congress. In that way you can see whether Congress is going to be with you or not, to save yourself the embarrassment of suddenly having Congress say 2-to-1 they want no part of it.

Mr. BUNDY. That is exactly what I am saying.

Chairman RUBICOFF. How do you feel about the possibility of disclosure of sensitive information by the new committee?

Would you consider that to be a serious weakness, assuming that there were a Senate committee of nine members, with the majority leader appointing five, the minority leader appointing four? Would you be concerned about that type of committee leaking secrets?

Mr. BUNDY. I do not want to say there is no danger of damaging leaks, but I think if you start, as I do, with the assumption that there has to be more fully organized and operational oversight than we have had in the past, then it seems to me that a small Senate committee or a relatively small joint committee is the least available risk, and I just think that it is an acceptable risk.

Chairman RUBICOFF. Is it an acceptable risk for a democracy that is basically an open society?

Mr. BUNDY. I would say that not to have it is an unacceptable risk, let me put it that way, Mr. Chairman.

Chairman RUBICOFF. Would you summarize for us your views on the complex issue of the conduct of covert activity?

Mr. BUNDY. As I say, I would put aside these covert activities of the Angolan magnitude. They are not covert, and they should not be treated that way.

I really do not have any current knowledge on this. If you have continuing small-scale operations which do not amount to the kind of intervention in a political context which has been much publicized in the case of Chile, there are people who have been agents or with whom we have a cooperative intelligence relationship and sometimes a cooperative intelligence relationship among selected individuals; if those individuals are high ranking in their respective governments, it also becomes a matter of political importance.

I think, incidentally, that it is less important than it used to be, and I think that decline in importance is desirable. I can remember times when the CIA men in a given country was closer to the Government of that country than the Ambassador. That seemed to us a mistake; and when we encountered a situation of that kind in the early 1960's, we changed that situation.

I think diplomacy is better left to the diplomats, but I think that line is one that the committee is well advised to keep an eye on. That kind of thing has happened in the covert political action field in the past.

Then you get to covert political action; that is to say, direct support for a group or a party or a faction or a group which is a factor in the politics of another country—and that is what I think is the most sensitive area—I think that it is very uncertain. I will put it another way. I think it is clear that there ought to be less of it than there has been over the last generation, in part because the basic requirements, the shape of the cold war, the risk to democracy, and indeed, to the survival of any form of nontotalitarian society, have changed. The relationship of the United States to those problems in other countries have changed.

The very heavy responsibilities which we had, for example, in the reconstruction of Western Europe after the Second World War at the time of the blockade of Berlin and the height of the cold war, in my judgment created an environment in which it was much more understandable that there should be covert political support to democratic political parties than it would be in the same area today, although I do not wish to be heard to say that there is nothing that we should do to support democracy and to resist totalitarian tendencies in that part of the world today.

I am not giving you a very precise answer, Senator Ribicoff, because I do not feel that I am that well informed about the details of particular dangers and particular possibilities to be able to pass judgment on what the Director said this morning is a very limited number of cases in which this action now appears to be desirable, even to the executive branch.

Chairman RIBICOFF. One final question.

Do you believe that if we had, in all of these sensitive countries, strong, knowledgeable, sophisticated Ambassadors, that we would obviate some of the instances where a CIA representative became the "rogue elephant"?

Mr. BUNDRY. Yes; I do. I also think that it would be helpful if we made more use of strong, knowledgeable Ambassadors and did not indulge a penchant for individualistic and secretive action.

Chairman RIBICOFF. This is a problem for the two strong gentlemen on my right, who have such a prominent role in the Foreign Relations Committee, to insist that they present to us strong, powerful, sophisticated, intelligent Ambassadors.

Thank you very much, Mr. Bundy.

Senator PERCY?

Senator PERCY. Just to show how bipartisan all of this is, I would like the chairman to look at my notes. I have noted that a key problem is incompetent ambassadors.

There have been weak sisters nominated for political reasons, and "fat cats" who have been nominated to be diplomats. I can imagine why a sophisticated member of the Agency would be more respected by the Government than such an ambassador.

It is our job to prevent those appointments, and I think we have. In more recent years, I think we have been more active in preventing such nominations being sent down. When we get word that somebody like that is going to be nominated, we say that they are going to have a tough time down here, and we have stopped a lot of them.

I think that is a key point.

I would like to ask one other question in following up on Senator Ribicoff's line of questioning. If we cannot carry on these large-scale covert operations because they cannot be kept secret because of the vigilance of the press and Congress, if we undertake an activity, does not the Committee of 40 have to weigh the chances of it being revealed if we undertake it; then, if it is revealed, what will be the cost and whether the cost will really do irreparable damage to the very cause we are trying to serve?

In Italy, for instance, do not those factors have to be taken into account? Will it not cut back some of this activity simply because of that fact?

Mr. BUNDY. I think they do have to take that into account. I detect some tendency to feel that as long as you do not have to talk about an operation, it is still really in some senses not public, and I do not agree with that.

By the time you get something as clearly a matter of major activity and public interest as Angola or the proposals with respect to Italy, of which I have read less, but enough to see that they are hardly secret, the danger of pretending that the thing is not happening or thinking you do not have to explain or that you can go on operating without discussing it, the danger is very great.

I might say in that context, in the years that I was a member of that committee, there was a regular tendency to ask in each case what plans the Agency had against the contingency of a leak. Such plans often went by the title "plausible denial"—not a very good name.

The most dramatic example of that occurred in 1960, at a time when I was not in the Government, the shooting down of the U-2. Most of the trouble that developed there developed because the Government went through four or five implausible denials over a period of not many days. Their reasons were honorable. They were trying not to make a flat confrontation between the President of the United States and Mr. Khrushchev.

I do not think that they succeeded very well. In the end, the President had to say that he had authorized it.

If they had not been beguiled by this notion that you could say the thing never happened, they would have thought through some more persuasive way of explaining why that, in my judgment, very important, highly justified, and very useful set of enterprises, the U-2 overflights, were in fact not illegitimate in the wider sense because they did serve the interests of the balance of strategic power and preserved us from irrational fears about the danger of nuclear war.

Senator PERCY. Mr. Bundy, a few years ago when I discovered that the CIA was training the Chicago police in contravention of the law

of the land, I asked for assurances of two successive Directors of the CIA that they would institute procedures to prohibit that type of activity from being engaged in by CIA personnel, and they did so, to the best of my knowledge.

Mr. Colby has revealed this morning that he has learned that there were two operations that he did not know of before, Chile and one other. Chile was a pretty big one. Its impact was fairly major.

Do you think that the Director should, in the light of all the testimony we have had—ever Dean Rusk did not know certain things—institute internal procedures that will insure that there would be stiff penalties for anyone in an intelligence agency carrying on some activity that the responsible person to the President was not aware of?

Mr. BUNNY. I think it is absolutely critical to the restoration of effective confidence in this whole enterprise that there not be only the kind of rearrangement and reinforcement of oversight in the Congress which happens to be our specific business this morning, but a parallel tightening of procedures and controls from the executive branch, and that means in the very first instance that we should not have situations which have been revealed in the testimony last year where the Director of the Central Intelligence Agency himself did not know of very important things going on inside the Agency.

I suppose that means a reinforcement of the inspector general. It means a clear-cut understanding between the Director and his immediate deputies and down the line, that one does not wish to perpetuate this notion that this is too sensitive for so and so to know about it.

That, in my view, is a distortion of a very natural principle of intelligence. The Director of Central Intelligence does not need to know the name of covert individuals who are working with controlling agents in dangerous countries. He would not want to know that. But he needs to know what is going on in the sense he knows the size and sense of the operation.

It is a distortion of that business of compartmentalization that has led to these abuses.

Senator PERCY. Do you concur with Mr. Katzenbach's suggestion that even though he opposes advance notice of covert activities to the Congress that every such activity must be committed to a written record, available for inspection at an appropriate time in the future? Would that prevent—once they commit it to writing—the activity from being expanded further than might be the case if they could just do it without any kind of record?

Mr. BUNNY. I think it is probably desirable to have a better written record for the executive branch's own purposes.

I think it is also appropriate that some form of written accountability should be included in the responsibility ties. I do not want to try to define exactly what that should be. If you try to define a piece of paper, you may get a piece of paper that has something in it that you do not want, like what is the name of so-and-so. But an appropriate, formal accounting seems to be a necessary part of effective oversight.

Senator PERCY. Finally, what is your view of the suggestion that the role of DCI be separated from that of Director of the CIA?

Mr. BUNNY. On the surface, that is quite an attractive idea, but I doubt that it would work. I am inclined to think that a DCI without

an agency of his own, or whoever it was, a coordinator of national intelligence, would not, in fact, be in a very strong position to conduct that kind of oversight.

Senator PERCY. Mr. Bundy, could you provide at some point to complete the record, the exact responsibility that you had in Government and in the White House? And then if you would indulge the committee, could we submit some questions to you for answer at your leisure and keep the record of the committee open?

Mr. BUNDY. Will you let me off the left-hand side of the chart, just saying simply my relationships with the Cabinet were deferential and excellent?

Senator PERCY. Not personal relationships, but your intimate knowledge of each of the intelligence activities.

Mr. BUNDY. The intelligence activities are the only ones. The ones coming under the NSC are the ones that I would have useful information on, I think.

Senator PERCY. Could we submit a few other questions to you that time does not permit now?

Mr. BUNDY. Yes.

Senator PERCY. Thank you.

[The information referred to and subsequently supplied follows:]

FEBRUARY 4, 1976.

HON. ABRAHAM A. RIBICOFF,
Chairman, Committee on Government Operations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: During my appearance before the Committee on Government Operations on January 27 Senator Percy asked me to provide for the record an account of the responsibilities that I had while in the government in connection with the work of the intelligence community. This letter attempts to respond to that question.

I had two responsibilities in connection with the intelligence community during my service as Special Assistant for National Security Affairs between January 1961 and the end of February 1966. The first and more important was that I was the staff officer responsible to the President for organizing the flow of internal information on national security matters to him. The President of course retained his right to consult directly with the Director of the Central Intelligence Agency and with others in the intelligence community, and such direct consultation was frequent, especially in President Kennedy's time. But at the same time there were always a large number of Presidential questions and interests which required staff support. This staff work involved an obligation to be attentive to the product of the intelligence community so that items that might be of particular interest to the President were brought promptly to his attention. And conversely it involved an effort to communicate to appropriate officers of the intelligence community particular interests and concerns which the President might have.

There were a number of means by which this work was carried out, ranging from informal intelligence memoranda to full-scale national intelligence estimates. There was also a daily report from the Central Intelligence Agency to the President. This daily report was almost invariably read by the President himself.

The other principal part of my responsibilities in the field of intelligence was service as a member of the committee which was responsible for the oversight of covert operations in the field of intelligence collection, political action, and military or paramilitary operations. This committee had different names at the time, but it was essentially the predecessor of what is now called the Forty Committee. I was its chairman during my service at the White House, except for a period of somewhat over a year in 1961-1962 when General Maxwell Taylor had that responsibility.

This committee was responsible for screening proposals and making recommendations to the President. In my recollection all proposals that implied any

significant change in policy or in levels of risk were authorized only on the basis of direct Presidential approval. As I testified on January 27, I do not believe that the staff work of this committee was deep or strong enough, although the individuals assigned to that work were excellent. As in the case of Congressional oversight, so in that of control and monitoring in the Executive Branch. I believe there is a need for a tighter and more sustained control, and for the engagement of individuals who are less heavily burdened than those who were members of this committee in my time.

Sincerely,

McGEORGE BUNDY.

Chairman RIBICOFF. Senator Nunn?

Senator NUNN. Mr. Chairman, I would just take a few moments.

Mr. Bundy, I will commend you on what I think is a very, very thoughtful statement. I think you raise a lot of points here that have not been raised previously and dealt with them in a very provocative manner. I think it will be of great assistance to us.

What do you mean by the word "paramilitary"? That is a little hazy in your statement, where you go from paramilitary to covert, and you use the Angola example.

Do you mean by "paramilitary" an involvement of American men that would not be in uniform, but nevertheless would be armed, or do you consider "paramilitary" to mean an aid program, furnishing aid through a third country to buy military weapons to be supplied to fighters other than American nationals?

Mr. BUNDY. I would include both if they were taking place in nominally civilian and nominally nonmilitary ways.

Just the fact that you might be wearing civilian clothes, if you are engaged in military training, you are engaged in a military activity, but you would become a kind of paramilitary by not being a colonel or a general in uniform.

If you provide military weapons or weapons of destruction and do not do it as military assistance, but do it just the same, that is also a kind of paramilitary activity. Sometimes you do this by the kind of training that occurred in Southeast Asia of dissident or determined tribesmen, and I think it is anything that has relation to the use of force that is not formally a part of the armed forces.

Senator NUNN. In the Angolan example, I think your observation is correct. That operation in the present atmosphere cannot be secret. Under that kind of action, when you say let us go open with it, in other words, under that kind of an example, you would have the administration come up to the Foreign Relations Committee and say we need a number of million dollars as foreign aid assistance to Angola.

You would have a regular request, in lieu of a secret, covert paramilitary or whatever you would like to term it, action, is that right?

Mr. BUNDY. That is right.

Senator NUNN. Do you think under those conditions you are really describing an elimination of that kind of activity except in extreme circumstances?

Mr. BUNDY. In part, it is a matter of definition, is it not, Senator? I would not exclude at all the notion that if there really were a demonstrated, large-scale U.S. interest in the competition for control in Angola that it ought to be possible--indeed, I think it is necessary under our system--that the public and the Congress be persuaded.

I do not think that there is anything that I know of in the Constitution or in our history that suggests that covertness is an essential part of the capabilities of the Commander in Chief, covertness in the sense of not admitting that he is doing it.

Once you are in a war situation, that is where OSS was born. Nobody criticized OSS for being a secret instrument, of carrying on an acknowledged and evident war. That is a different proposition.

I think large scale covert interventions of this sort, as a practical matter, are not possible. I do not think as a political matter they are impossible, depending how dangerous we as a country think the situation is. If you asked me, do I have pervasive evidence that Angola represents that kind of danger to the security of the United States. I would say I have not.

Senator NUNN. This example is really interesting. I am not disagreeing with you at all. I would be inclined to agree with that analysis.

I also think that if you look back at our history, we made grave mistakes in continuing to fight the last war and not anticipating the possible scenario of the next one.

With that kind of fear, are we not eliminating some intermediate steps rightly or wrongly that can be taken by our Nation? As a practical matter I think they already have been eliminated. Are we not limited when we eliminate paramilitary activities. Are we then not limiting the decisionmakers to escalation if they think the matter is important? Are we not in effect breaking some de facto rules that we are going to escalate very rapidly matters of importance to our Nation in the future?

Mr. BUNBY. I do not think I agree with that Senator, although I grant you that that is a real danger. But I think if you hold the distinction of whether you do it covertly or whether you do it openly, doing it openly does not necessarily mean doing it on a very large scale or doing it open-ended. Indeed, one of the very constructive elements, in my judgment of the War Powers Resolution is that it introduces the Congress into this matter in ways that are not limited to the black and white process of declaration of war which so often has been the case in the past.

If the President were to take action under the War Powers Resolution, and suppose that he decided to send civilian personnel, not military personnel, to train an Angolan faction, and he reported that matter as an action taken, either under the War Powers Resolution or under something like it, I do not feel that the fact that the operation is not covert prevents it from being skillfully designed.

We get into an argument here, partly because people think the Agency knows how to do certain kinds of things and the Pentagon does not.

Senator NUNN. I do not agree with that. I do not think the Agency has the capability to have a covert, paramilitary operation. I do not think that should be the Agency role. I am trying to analyze where we are standing today.

It seems to me if you do it openly in a country like ours, it would be almost ludicrous to do it with civilian personnel. I think that you would escalate with military personnel.

I do not imagine the American people would support open, paramilitary, civilian personnel being sent to a foreign nation. I cannot

conceive of that. By definition, we had better start looking at where we are today. I think one of the mistakes we made in 1960 is that we did not escalate. That is my view.

Nevertheless, I think we are eliminating the intermediate step, and our country should realize that, because I believe—not in Angola, but in another situation—the President of the United States, if he does do it openly, would probably be recommending American troops, not some kind of civilian operation. I find that incredible.

I find it incredible that the President would say, we want to send a thousand civilians that we are going to recruit to Angola armed with American weapons and we want the Foreign Affairs Committee and Congress to approve that.

Mr. BUNDY. This is not the crucial part of my argument. I would say simply whatever the size of the operation, if to you it is incredible that it should be civilian, well and good. Economic assistance missions, of course, are civilian. Indeed, police have been trained under AID in the past, quite openly.

I am not sure it is quite that hard and fast, but leave it be. The question on the size of the operation is the crucial one. If it is big enough so that it is clearly going to be a public matter, then it should be handled as a public matter. It does not change the necessary size of it, that does not make it impracticable for the President to say, I am going to send a hundred officers out to advise Holden Roberto. All you have to do is explain why.

Senator NUNN. Thank you.

Chairman RIBICOFF. Senator Javits?

Senator JAVITS. Thank you, Mr. Chairman.

Mr. Bundy, I am very glad to have you with us and have this very fruitful thinking. I like very much what you say about the fact that some issues are just so serious that you have to weigh the fact that they may go better if secret against the urgent need for the broad support of the country. I think that is really in essence the standards that we have to begin to apply.

That leads me to your perception of the problem with Mr. Colby: that is, our need for intelligence and how we get it.

I would like to refer you to page 5 of your statement in which you said:

A very considerable part of the work of the CIA after all is the collection of information by means whose general character is highly classified and the processes of intelligence assessment together with the assessments themselves are a proper subject for close Congressional attention. Indeed, Congress is not only a legitimate, but a most important recipient for most of the data and many of the analytical studies available to the intelligence community. It should be an early task of the new committee to recommend a statutory base for more formal and comprehensive reporting to Congress in this field.

There, I think, we could very much profit from any ideas on that that you have. You served in a very key executive department position between the Congress and the executive department. I am so pleased that you recognize that we, too, have to act with intelligence and foresight and do you have any suggestions as to how this may be formalized?

You heard, I am sure, Mr. Colby say that the way he does it is being willing to come up here anytime anybody wants it.

Mr. BUNDY. With all due respect to any Director, I have in mind something much wider and something deeper than that.

Senator JAVITS. I am sure you do.

Mr. BUNDY. The intelligence community in the executive branch is a very large-scale enterprise. It has to be. Intelligence with respect to industrial, economic resource matters, is found not just in the national security intelligence community, but in other departments. It can be as important as military intelligence, intelligence about intelligence.

All of these matters need more than the concise and informed and balanced summaries which I think have been the habit of CIA Directors briefing congressional groups, and this is not, of course, a new idea with me—I think the man who has carried this banner in the past, if I am correct, is Senator, now Ambassador, Cooper. My experience in reading the output of the intelligence community is that most of it would be just as valuable and just as appropriate for a Member of the Congress and his staff member as it is for the Assistant to the President and his staff member.

The only place you get in difficulty is when the President has commissioned a particular study that relates on the face of it to something he may be thinking of doing; he may have asked, "What would happen if I do such and such in this country?"

He is entitled to have such information advisory to him in the decisionmaking process, and I would not share those documents, as such. On the other hand, if a Congressman asked the same question, what would happen if the United States did such and such in this country at such and such a time, he would have a right to the same answer.

What you are protecting is only what is on the President's mind, not the mine of information that ought to belong to the whole decision-making community of which the Congress is a part.

Senator JAVITS. I thoroughly agree with that, and the courts have held on it. The courts, after all, did not give a broad construction to what is called executive privilege; they qualified it and restricted it sharply, when the President's own personal conduct was involved. So I would agree with that.

How would you actually manage this? Would you have a new form of procedure by which members could request committees to request with periodic availability to the whole Congress, intelligence assessment in a particular field?

Mr. BUNDY. I think the committees should have the right to request this and I think individuals also should have that kind of power, obviously within the limits of not overstraining the responsive powers of an agency or a group of agencies. It is quite possible that you could manage wide ranges of this information by having stronger relations between the Congressional Research Service and the CIA, simply because so much of what they have over there does not need a stamp on it at all.

Senator JAVITS. I would greatly welcome it, if you have any further ideas for specifically articulating what you have just told us—I am hoping to interest many of my colleagues in this idea of cranking into this legislation something that recognizes that we are not just policemen, monitors, or overseers, that we need it too and will do a much better job if we have it. How do we get it?

Chairman RUBINOFF. The thought occurs to me, as I listened to Senator Javits' query, as always, Senator Javits has something important to say, and the ideas are excellent.

The thought that I have, Senator Javits, is in order to get this committee going as soon as possible; it could very well be in the report or in the legislation that we suggest that this oversight committee report back to the Congress with its suggestion of how they believe, from their work as an oversight committee, the entire Congress could be made a part of the intelligence—I thought we might do that. It only occurred to me as I listened to your query, which I think is very, very sound. I can imagine some of the problems we have now with the Third World, the question of commodity agreements, the question of trade, the question of oil, what OPEC is doing, are they or are they not supplying aid to non-Moslem third countries?

These are economic issues that we are going to have to wrestle with—what are called ecopolitics even more than geopolitics. I can see where that can be very, very valuable information to me in the Finance Committee.

I think Senator Javits has made an excellent suggestion. I will talk to you further. This is something that we could ask the oversight committee once they get into this to see how they could get it to us.

Senator JAVITS. Unless we can by the time we are ready to articulate some beginnings in this area, I join the Chair to look into it.

I thank you very much.

Chairman RUBINOFF. Thank you very much.

[The prepared statement of Mr. Bundy follows:]

PREPARED STATEMENT OF McGEORGE BUNDY, FORMER SPECIAL ASSISTANT TO THE
PRESIDENT FOR NATIONAL SECURITY AFFAIRS

Mr. Chairman, it is an honor to respond to the invitation tendered by you and by Senator Percy to appear before your Committee to discuss the proposals before you for improving Congressional oversight of the government's intelligence activities. The questions at issue here are among the hardest in the conduct of our foreign affairs. I do not have dogmatic views on them, and I should emphasize at the outset that for almost ten years I have been out of the government, except for occasional specialized consultations in the later years of the Johnson Administration. I have no current access to the inside workings of the intelligence community, and I have seen to it that there is no connection between any intelligence agency and the work of the Ford Foundation. I come to you as a private citizen, speaking only for myself, and dependent mainly on public sources for my understanding of the current situation.

Let me first offer my views about the need for new and better Congressional oversight in this field, and then make a few comments on the nature of the work which might be done by a new committee.

My first conclusion is that we do indeed need a new committee. Some will be arguing for a new committee in each house, but my own belief is that a single joint committee on intelligence would be better. As long as there is adequate rotation in the membership of such a committee, I think it is possible to avoid the danger that the committee would be "co-opted" by the intelligence community, and I think the interests of Congress as a whole have been well served by such joint committees in the past. From the point of view of the Executive Branch—and perhaps also the public—there is always a great saving of precious time and energy when it is possible to focus accountability in a single committee. I am not saying that the task would be impossible if there were a committee on intelligence in each house, but for convenience I will here assume the establishment of a single new joint committee.

The need for the committee is now so obvious that it can be very briefly explained.

First, there is a genuine crisis of confidence in the quality, the integrity, and the discipline of the intelligence community, and that crisis cannot be resolved without the development of a trusted, visible, and effective means of Congressional oversight.

Second, the preliminary work of select committees in both the House and the Senate has demonstrated that there is need for a basic review and reconstruction of the hazy statutory underpinnings of major elements of the intelligence community. That is a job for a new committee.

Third, the makeshift arrangements under which some covert operations are now reported to members of no less than six committees of Congress have already shown that they are inadequate on two grounds: they do not in fact permit effective oversight, and they lead to unauthorized and arbitrary leaks. These matters should be handled through a new and less diffuse arrangement.

Fourth, and more generally, in the absence of a new committee a large and important section of our national government will remain without a serious or sustained relationship of accountability to Congress. This is an essentially unsound condition. There is now overwhelming evidence that the less formal methods of reporting which Congress found acceptable in earlier years have worn out. They are no longer effective either as an instrument of Congressional oversight or as a means for providing the intelligence community with the legitimacy that comes from properly informed Congressional approval.

The question of the jurisdiction of the new committee is important, and I think the general answer is reasonably clear. I think that its principal mandate should be to concern itself directly and closely with the work of the Central Intelligence Agency and the National Security Agency, and only generally and less directly with other parts of the intelligence community such as those to be found in the Department of Justice and the Department of Defense. While it is quite true that other departments should hold important responsibilities relating to intelligence, it would, I think, be a serious mistake to undercut the general responsibilities and powers of the communities now concerned with Defense and Justice. Especially in its first years, the new committee will have plenty to do if its primary attention is directed to CIA and NSA. It should, however, have authority to examine the assignments of responsibility for intelligence and counterintelligence throughout the Executive Branch, and in that context it should have a right to inform itself generally about relevant activities in other departments. Such an interest is not essentially different from that which has often led committees concerned primarily with one department to hear witnesses and seek documentary information from other agencies.

It may seem anomalous to include the National Security Agency among the direct concerns of the new committee. The reason for this recommendation is however, a simple one: while the NSA is administered under the Department of Defense, it has always been its mission to serve the intelligence community as a whole. For this reason it is intrinsically an intelligence agency rather than an integral part of the armed forces. Moreover, as a practical matter it would get closer and more informed oversight from a new intelligence committee than it can expect to receive from the heavily burdened committees now concerned with the Defense Department as a whole.

In a somewhat more general way, and with this exception for the NSA, one could describe the new committee as having an area of responsibility similar to that which the Director of Central Intelligence has had—immediate responsibility for the CIA itself—and a general but less direct concern for the work of the intelligence community as a whole. One would expect that the Director of Central Intelligence, or his successor by another name, would regard the new committee as the primary body in Congress to which he and his agency were accountable, and conversely one would expect the new committee to have the kind of relationship with the Director and his principal subordinates that Congress expects to exist between the Foreign Relations and Foreign Affairs Committees and the senior officers of the State Department.

Let me turn next to the question of the way the new committee might work. Most of the answer is that it will work as other standing committees work in the field of national security. It is true that there will be some special complexities in its relations with the agencies it will be watching most closely, but I think it is helpful to begin by recognizing that most of the work of the committee will not be essentially different from that of other committees which have parallel responsibilities. It is not essential, for example, that the main elements of in-

telligence budgets should be secret. At present the size and shape of the intelligence effort of the United States are almost surely better known to our adversaries than to us, and in the world as a whole the reputation for omnipresence of American intelligence is such that a much less secret treatment of intelligence budgets would be an improvement.

Moreover, in spite of the lamentable abuses that have been so much discussed in recent months, the great bulk of what is done in CIA and in NSA, even where specific techniques and results may be deeply secret, is work which a new committee could readily understand and monitor in a relatively open way. A very considerable part of the work of CIA, after all, is the collection of information by means whose general character is not highly classified, and the processes of intelligence assessment, together with the assessments themselves, are a proper subject for close Congressional attention. Indeed Congress is not only a legitimate but a most important recipient for most of the data and many of the analytic studies available from the intelligence community, and it should be an early task of the new committee to recommend a statutory base for more formal and comprehensive reporting to Congress in this field.

More generally, Congress is clearly entitled to satisfy itself that it understands the essentials of the complex processes by which intelligence is developed from all sources and made available to those who need it in the Executive Branch itself. This is of course a part of the wider question of the ways by which all aspects of national security policy are handled under the President. We all know that there are some limits on the degree to which Presidents and their senior advisers can be forced to discuss the exact ways in which advice is given and a decision made. Nonetheless the general processes of handling intelligence are not in principle of less importance and interest to Congress than the parallel questions which arise in matters of defense and diplomacy, and it is strongly in the interest of the intelligence community itself that there should be a committee directly concerned with the way in which its work is done and its product used.

In all the areas I have discussed so far there is much classified information, and some of it is genuinely and deeply sensitive. But there is nothing that is intrinsically more difficult than the parallel problems of sensitivity and classification which arise in diplomacy, in defense, and in the field of nuclear energy. Just as it is possible to discuss weapons systems without compromising critical details of technical design, and our defense posture without revealing the operational details of our contingency planning, so it is possible to consider general questions of intelligence collection without revealing sensitive capabilities, whether technical or human. There are many real secrets in the field of technical intelligence, as there are also in the work of secret agents. But it is not beyond the skill of a new committee, with a qualified staff, to address the task of oversight while respecting and protecting these real secrets. I see no special or inherent difficulty in these fields.

No one can deny that members of a new committee could conceivably demand specific information which it would be both dangerous and unnecessary for them to have. My own belief is that the record of Congressional committees in these matters does not justify any fear that the committee as a whole would wish to press for that kind of information. I also believe that if such an unlikely event did occur, the general opinion of Congress would support a properly explained resistance by the Executive Branch.

Moreover, it is worth noting that some of the matters which have had most attention in the last year or so should not be hard problems in the future. Assassination plotting, already forbidden within the Agency some years ago, should certainly be explicitly prohibited by statute, simply to reinforce the obvious and general judgment that it has no place in the work of the intelligence community. In the same way it should not be hard to reinforce existing statutes which have been violated in such instances as the massive surveillance of the U.S. mails.

There is a third and larger kind of thing, recently much in the news, which I believe will not be part of the secret work of the new committee, namely, large military and paramilitary operations like the one recently undertaken in Angola. The truth is that it is no longer possible to conduct such operations on an unacknowledged basis, so they should no longer be handled, either in the Executive Branch or in Congress, as if they were in any serious sense covert. Operations of this sort should be defended and explained by the most senior officials of the Executive Branch in the same way that those officials are expected to explain

and defend an open use of the armed forces or a program of military assistance. The primary interest of Congress in Angola, for example, is not in the number of aircraft employed or the volume of supplies delivered or the technical management of the enterprise by either the CIA or the Defense Department. The Primary interest of Congress is in what the United States Government thinks it is doing and why, as a major public question of foreign policy.

I have the impression that a large part of the current tension between the Executive Branch and Congress derives from the Administration's failure to recognize that times have changed with respect to large-scale covert operations abroad. Only last week, for example, Mr. William Colby asserted his belief that "the U.S. Government needs an ability to conduct large, unattributed, unadmitted operations." But the fact is that in 1976 it is quite simply wrong to suppose that there is any such animal as a large, unattributed, unadmitted operation. There have been such things in the past, but not now. The whole environment in which the U.S. Government now operates is such that it is quite simply inconceivable that a large operation can remain unattributed or unadmitted for any significant length of time, if at all. Moreover, it is a mistake to attribute the difficulty here primarily to recent requirements for reporting to Congressional committees. Its real cause is much deeper; it is the breakdown of the broad political consensus which made it possible, ten or fifteen years ago, for the CIA to conduct such large operations, in the face of widespread knowledge of their existence, without any admission or explanation from the U.S. Government.

Let me offer a single striking illustration of the difference between then and now. Much attention has been given, in recent months, to the fact that the Kennedy Administration, even after the fiasco of the Bay of Pigs, maintained a large-scale clandestine effort against the Castro regime in Cuba. There is no question that this happened, and to many it must appear that something is now being revealed which was successfully kept secret from Congress, the public, and the press at the time. Nothing could be further from the truth. What actually happened was that the existence of this effort was widely known, and that in the climate of the time, the major media and the Congress made no effort whatever to expose it in detail. Instead they took it for granted.

A single newspaper column of the time will make my point. Then as now one of the most widely read and authoritative reporters in the country was James Reston. In the spring of 1963, after the Bay of Pigs and even after the missile crisis, there was a sharp flurry of criticism of President Kennedy's policy toward Cuba on the ground that it was not strong enough. Mr. Reston commented thoughtfully on the President's problem in a column whose full text I offer as an annex to my remarks. Let me here read just a few sentences, as they appeared in the Sunday New York Times of April 21, 1963:

"Try as he may, he (President Kennedy) cannot satisfy his critics, and for a number of reasons.

"First, he is engaged in a subversive war there that cannot be discussed officially in any detail. There are a great many anti-Castro patriots in the hills on that island who are being supplied in the night by various ingenious methods, but this is not the kind of thing that can be talked about openly. * * *

"All this gives a negative cast to the President's Cuban policy * * * other than saying he is for "isolating" Cuba, he cannot talk much about how this is being done, and the net of it gives the impression of a policy of ineffective half-measures.

"* * * even many of the American newspaper editors who have been in Washington recently reflected impatience with the policy of restraint.

The column winds up quoting the President's defense of his policy of restraint and its last sentence is:

"But he could not tell the whole story, and in the end he did not quite quell the instinct for action."

I do not wish to belabor the morals here. Let us leave aside Mr. Reston's obvious sympathy with President Kennedy's dilemma. Let us leave aside also the fact that the "impression of a policy of ineffective half-measures" was quite accurate, even including its covert elements. Let us note simply that a reporter of the first rank stated quite matter-of-factly that a subversive war was being carried on, and that it obviously could not be discussed by the President. Yet the major press and Congress paid no attention! There was no hue-and-cry to get the details out; there was no thunder of indignation from the Senate or from the New York Times itself. The only problem was the one Mr. Reston correctly

reported: since Mr. Kennedy could not discuss his covert actions, he was forced to leave the field free to the critics of his apparent inaction. I ask you simply to contrast this record with what would happen today if a similar "revelation" were to be made about a similar effort by a reporter of similar standing.

What has happened in the meantime is that the major premise that permitted large-scale unadmitted action, in Cuba and elsewhere, has disappeared. There is no consensus now in favor of such actions, not even in the Caribbean; instead there is a great deal of sentiment against them and a deep conviction, in large parts of the Congress and the press, that there should be constant vigilance against, and detailed revelation of, all such activities. If we needed a current example, we have had it in Angola. It is just not possible there—or anywhere else—to have "large, unattributed, unadmitted operations." Such operations require a "benign neglect" from Congress and the press which neither will grant today.

I do not wish to be misunderstood as nostalgic for the good old days, but I do want to note my belief that one frequent complaint against such CIA operations is almost wholly unjustified: I do not believe that there is any major case in which covert operations by themselves have been the cause of a later and heavier involvement. That was not the case in Vietnam, where visible and heavily reported political and military involvement were always much more important than the role of the CIA. That was not the case in Cuba, or in any part of Africa.

The present and decisive objective to these covert operations is not that they drag the country deeply into things it would otherwise stay out of. It is simply that they are impossible. They will not stay unattributed or unacknowledged. Since they are impossible, and since fear of them is widespread and real, they should be ruled out. If such large-scale covert operations are not plainly and credibly foresworn by the Administration, then they should be prevented by Congress. Any such military and paramilitary operations should be governed by the open processes parallel to those that Congress applies to the deployment of U.S. armed forces and the provision of military assistance.

We have now dealt, though much too briefly, with most of what will—and what will not—be on the agenda of the new committee.

The only truly difficult area which remains is that of "covert action" which really should remain secret if undertaken at all. Most of this activity, most of the time, involves relatively small individual actions, often intimately related to the collection of intelligence. The committee will probably not wish to know details of such specific small actions, but it will wish to know in a general way how much of this sort of thing there is, and what its purposes and consequences are. It should, I think, keep a constant eye out for the danger that an activity which seems desirable for an immediate purpose may have side effects that outweigh its value. Questions of this sort arise with special urgency in the field of covert information and propaganda activity. It is very dangerous to spread "disinformation," for example, when one of its innocent consumers may be the American public.

Moreover when American intelligence activities, even small ones, become an important part of the political relations between the United States and another country, it is the purpose and shape of these political relations which should most occupy the Congress, and the basic inquiry into such policy issues should probably take place not in the intelligence committee but in a committee or subcommittee directly concerned with foreign affairs as such. It seems to me that the new committee should have the ways and means of informing itself on the general levels of intelligence activity in such a way as to know where there is a question of foreign policy that may not have had proper debate.

Let me now turn specifically to the question of covert political operations such as those which have been widely publicized in relation to Chile, and more recently in relation to Italy. Because the problems are so hard, it is tempting to reach the conclusion that actions of this sort should simply not be undertaken, at least for a time. While they do not have the innately high visibility that attaches to military and paramilitary activities, they are much harder to conduct in true secrecy than they used to be, and in cases where the damage done by revelation of the effort would clearly exceed any value it might have, it would seem to me wise current policy for the Administration to stay away from such activities.

But in the long run I believe it would be unwise to assume that there will be no future cases in which we will wish to give political and financial support to friends abroad for reasons similar to those that can lead to open programs of

military and economic assistance, and in some of these cases it could be important that the sources of such financial support be kept secret. In the current world situation such cases are not as frequent as they were twenty-five years ago, but I think it would be imprudent to take it for granted that no such need will arise in the future. If, however, we assume that major operations of this sort can safely be omitted in the immediate future, while a new committee is developing its staff, its work processes, and its relationships with other committees and with the Executive Branch, then there will be time for the new committee to develop its own ways and means of reviewing covert political action.

No proposal for this process that I have heard so far seems to me wholly satisfactory, and I think we should recognize that there is an inherent difficulty here. A truly covert operation, one the very existence of which is supposed to be secret, cannot by definition be openly monitored; in this important respect this kind of secret is different from those which are dealt with routinely in other committees. I doubt if this difficulty can be resolved today by statutory language. I myself do not think it at all clear, for example, that the new committee will find it wise to insist on advance knowledge of all such actions.

Efforts to deal with this problem by dependence on the consciences of individual members of Congress seem to me bound to fail. If every Senator and Representative is free to follow his own judgment in such a matter, and if the new committee is properly representative of sentiment in Congress as a whole, then secrecy can never be assured, and the only alternative open to the Executive Branch is not to undertake such activity. If that is what Congress wants, it should say so.

Another method recently proposed is that when there is a dispute about keeping such a matter secret the issue should be resolved by a secret session of the whole Senate. Unfortunately the method is not a way of deciding which way to go; it is only a way of deciding against secrecy. Is it not obvious to us all that in 1976 anything discussed among one hundred Senators is no longer covert? Since I doubt that those who support this proposal are so naive as to believe otherwise, it would appear that by proposing this appellate process they are in fact proposing a veto power for any new committee. A mere threat to appeal to the full Senate would be a way of ending any action which truly depended on secrecy for success.

Should there be such a veto power, and if so what standards should be followed by those who may be considering its exercise? On the first question I do not believe we now know the answer. But on the matter of standards I think we can do better. I believe that the right questions to be asked about such operations are not essentially different from those that should be asked all through the work of the new committee:

First, one can and should ask just how such an operation relates to a publicly recognized and generally approved policy of the U.S. Government. Where there is no such relationship I believe that the case against any operation becomes very strong, because in such cases the operation will often be an effort to achieve some policy objective without the necessity of explaining and defending it to Congress and to the public. This tendency, so evident in recent years, should be steadily and strenuously resisted.

Second, the question should always be asked whether in fact the proposed operation does require secrecy, and for international reasons. One of the anomalies of the present situation in Angola is that while we have sought strenuously and fruitlessly to keep our operations secret, no such inhibitions have troubled the Cubans or the Russians. Over the years there has been a general exaggeration of the importance of secrecy in these matters, and a hearty skepticism about any asserted need for covertness should be a regular part of the equipment of members of the new committee.

Third, the new committee should ask the same operational questions that proposals of this sort should also face inside the Executive Branch. Why is the operation needed? What chance is there that it will accomplish the desired results? What are the costs? What are the implications of failure? What are the penalties of disclosure?

It can be argued that the requirement of explaining such operations and defending them before any Congressional body is a heavy restraint upon an instrument of foreign policy which is occasionally of great importance, and that therefore procedures of this kind significantly weaken the operational

resources available at any time to the President and his chief advisors. That is at least partly true. On the other hand, in any case where there was a clear-cut and open consensus on an urgent need for action, we could expect the review and judgment of the committee to be less burdensome than may now appear. In the meantime the present lack of public confidence in our covert activities demands the kind of oversight we have been discussing. I believe that the most important cause of the breakdown of public confidence in our foreign policy has been unexplained and secretive decision-making at and near the top of the Executive Branch. In the effort to rebuild confidence, in the work of the intelligence community as elsewhere, we should lean to the side of openness, even at the expense of some interference with activities otherwise desirable.

Let me conclude with a general observation about the character and quality of the American intelligence community. It is not fairly to be judged only by its occasional abuses or its failures, serious as those may be. It is only in particular flagrant abuses, not in general behavior, that some parts of the Agency have behaved like a rogue elephant. It is true that it has not always been properly monitored by its own leaders and by the White House, and it is also true that there is a general tendency for energetic officers in any secret service to press to the limit of their orders, and sometimes beyond. These are matters which can and should be handled better in the future. But it is wholly wrong to hold the CIA responsible for the errors of those who have given it unwise orders in the past. That has happened in every Administration, and until statesmen are perfect it will happen again. Moreover, intelligence, counterintelligence and covert action are not fields for those who expect predictable perfection.

But it really is true that in the nature of things the achievements of the intelligence community will be less noticed than its failures, its generally good discipline less noticed than its occasional irresponsibility, and its usually cool and careful estimates of international reality less noticed than the wild opinions of its occasional zealot. In my experience the American intelligence community has been generally dedicated, skilled, and loyal to the values of our free society. A new committee is needed, in very large part, to help the country to regain a reasonable confidence that this is so.

The President's critics, meanwhile, are free to talk out. The Cuban refugees can release their versions of the President's "promises." Governor Nelson Rockefeller of New York feels no restraint about implying that the President is "appeasing" Khrushchev in Cuba. And Senator Kenneth Keating of New York can plead with some effect for more honesty and cooperation on Cuba between the President and his critics.

Meanwhile, the natural instincts of the nation are against the President. Cuba is too close. The American people don't like stalemates, and, while they don't like war either, they are impatient with half-measures that don't seem to be getting anywhere. It is fairly obvious that the United States cannot invade Cuba without killing Russians or impose a total blockade on that island without starving Russians. This is why the President rejects both policies, but this still doesn't satisfy the nation—and for a fairly obvious reason.

THE NATIVE IMPULSE

The impulse to action is strong in this country. This was the impulse that conquered the American wilderness. The problems before the American on the frontier were plain and simple. To clear the forests, to provide food for his family, to save his life from animals or savages, he had to act. To pause, to delay, even to rely on half-measures could be dangerous in those days, or even fatal.

This is still a powerful instinct in the United States, especially when the enemy is close. The President himself acted upon it in the Bay of Pigs invasion, and while it can be argued, that he didn't act boldly enough then, it could also be argued that he should have thought a little more before he acted at all.

Nevertheless, even many of the American newspaper editors who have been in Washington recently reflected impatience with the policy of restraint. Whenever they were not preoccupied with "managing the news," or mismanaging the booze, they turned to him on Cuba.

One asked, "When if ever is our restraint going to come to an end?"

"Well, I hope," the President replied, "our restraint or sense of responsibility will not ever come to an end." But he could not tell the whole story, and in the end he did not quite quell the instinct for action.

[From the New York Times, Sunday, Apr. 21, 1963]

KENNEDY AND HIS CRITICS ON CUBA

(By James Reston)

Washington, April 20—Every President has his nightmare. Hoover's was the depression, Roosevelt's was Pearl Harbor, Truman's was Korea and Kennedy's is Cuba. Try as he may, he cannot satisfy his critics, and for a number of reasons.

First, he is engaged in a subversive war there that cannot be discussed officially in any detail. There are a great many anti-Castro patriots in the hills on that island who are being supplied in the night by various ingenious methods, but this is not the kind of thing that can be talked about openly.

Second, the Administration has given a wrong impression about its aid to the Cuban refugees, but here again the impression was unavoidable. For example, the President has said that he was opposed to hit-and-run raids by Cuban refugees on Soviet ships and Cuban coastal installations, but it does not follow from this that he is opposed to landings on the long Cuban shoreline at night for the purpose of sabotage within Cuba itself.

Even the public declaration by the United States of a clear set of "peace aims" for Cuba is difficult at the present time. This has been discussed at great length within the Administration. Some officials believe that a manifesto on what Washington would do to help an anti-Communist government there might encourage the overthrow of Castro from within. But even this is a delicate exercise.

For almost any manifesto of this kind could easily appear to be a kind of foreign "diktat," and be subject to the old charge that the United States was trying once more to impose its ideas on the future organization and government of Cuba.

THE NEGATIVE IMPRESSION

All this gives a negative cast to the President's Cuban policy. He is against invasion. He is against a naval blockade of the island. He is against Dr. Jose Miro Cardona, the former head of the Cuban Revolutionary Council. But other than saying he is for "isolating" Cuba, he cannot talk much about how this is being done, and the net of it gives the impression of a policy of ineffective half-measures.

Chairman RIBICOFF. The committee will stand adjourned until 10 o'clock Monday morning.

[Whereupon, at 1:25 p.m., the committee was recessed, to reconvene at 10 a.m., Monday, January 26, 1976.]

OVERSIGHT OF U.S. GOVERNMENT INTELLIGENCE FUNCTIONS

MONDAY, JANUARY 26, 1976

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The committee met, pursuant to recess, at 10 a.m., in room 3302, the Dirksen Senate Office Building, Hon. Abraham Ribicoff (chairman of the committee) presiding.

President: Senators Ribicoff, Nunn, Percy, Brock, and Weicker.

Staff members present: Richard A. Wegman, chief counsel and staff director; Paul Hoff, counsel; Paul Rosenthal, assistant counsel; Marilyn A. Harris, chief clerk; and Elizabeth A. Preast, assistant chief clerk.

Chairman Ribicoff. The committee will be in order.

Our first witness today is Mr. Clarence Kelley, Director of the Federal Bureau of Investigation.

Mr. Kelley, would you please proceed?

TESTIMONY OF CLARENCE M. KELLEY, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

Mr. KELLEY. Thank you, Senator Ribicoff.

I want to thank you for giving me the opportunity to appear before this committee concerning a most important issue—that of oversight.

For some months now, the FBI has undergone a most exhaustive review of its intelligence operations, as have other members of the intelligence community. This review has covered both domestic and foreign intelligence operations of the FBI.

I am hopeful that the results of these extensive reviews will be helpful to the Congress as it considers practical recommendations for legislative oversight.

The FBI has in the past recognized and, indeed, requested a clear delineation of its intelligence responsibilities and authority to conduct investigations in this extremely sensitive area.

We realize that Congress faces a difficult task if it decides to draft oversight legislation that will be of lasting benefit to the American people. Many issues are involved, and most of them are not easily resolved.

The primary responsibility for correctness of FBI activities rests in its Director—a responsibility I readily assume.

I would like to offer for your consideration some of the basic questions I believe must be answered:

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One, should congressional responsibilities for oversight of the FBI be consolidated?

Two, should Congress become actively involved in the decision-making process of the administration of the FBI?

Three, what is the proper degree—and mode—of congressional access to FBI information?

Four, what clearance procedures and controls should be established for staff members of a congressional oversight committee?

As I have previously testified before a congressional committee and mentioned here today, the decisions in the FBI are mine and I assume full responsibility for them.

I think the point merits reiteration. Some of the mistakes in the past were occasioned by direct orders from higher authorities outside the FBI.

We have welcomed Attorney General Levi's guidance, counsel, and his continuous availability, in his own words, "as a lightning rod to deflect improper requests."

Within days after taking office, Attorney General Levi instructed that I immediately report to him any requests or practices which, in my judgment, were improper or which, considering the context of the request, I believed presented the appearance of impropriety.

I can assure you, also, that in my administration of the FBI I bring to the attention of the Attorney General and the Deputy Attorney General major policy questions, including those that arise in my continuing review of our operations and practices. These are discussed openly and candidly so that the Attorney General can discharge his responsibilities with regard to the FBI.

There is no question in my mind that the basic structure of the FBI is sound; but it would be a mistake to think that integrity can be assured only through institutional means.

Integrity is a human quality. And the integrity of the FBI therefore is dependent upon the character of the Director of the FBI and every member of the FBI under him. It will always be so.

I am sure you are aware the Attorney General created a committee of Department and FBI representatives to draft guidelines covering FBI investigations.

These guidelines have been discussed with various committees of Congress and although not finalized at this time, they could prove beneficial in the administration of the FBI.

I would like to comment briefly on the matter of determining the degree and method of access to FBI files granted to a committee having oversight responsibility.

I believe such determination must carefully consider the questions raised as to the protection of the integrity of such matter aside from privacy considerations.

Much of the information received by the Bureau is furnished voluntarily, not only by individuals but by cooperative foreign governments. They do so in return for an expressed or implied promise of confidentiality. The FBI regards such promises as binding.

The establishment of unlimited access could seriously jeopardize the flow of volunteered information which is the lifeblood of our investigative organization.

As the number of persons having access to highly sensitive materials is increased, the chance of an intentional or inadvertant disclosure also increases.

A perfectly well-intentioned person who legitimately comes into possession of sensitive information may well forget, at a later time and in another position, the circumstances under which he acquired the information.

Law enforcement in this Nation is largely dependent upon citizen cooperation. Should citizens no longer have any assurance their identities will be protected, the very foundation of cooperation upon which the Bureau is so reliant will be shaken.

Our legitimate concern in this area is borne out by the fact courts continue to recognize the special legal status accorded informants in the law enforcement community, in that their true identities are protected.

Should the identities of informants be jeopardized by the unnecessary proliferation of information, there will be a severe impact on the ability of the FBI to discharge its mandated responsibilities.

We are concerned about the countless public-spirited citizens who come forward voluntarily with information essential for the FBI to function effectively.

Other extremely valuable sources of such information are cooperative agencies in this country and abroad. Should the FBI be required to relinquish, over our objections, information of this nature, it is quite likely we would be denied such information in the future.

The select committees have received unprecedented access to information from the FBI, within agreed limits; but we must ask whether the same degree of access should be allowed, or is essential to, an ongoing oversight committee.

The select committees came into being in the Watergate atmosphere. Issues were raised that needed to be resolved. Most of them have been resolved with regard to the FBI.

I must point out that our diligent cooperation in the endeavors of the committee stems, in part, from our own commitment to review the actions of the FBI in the past in order to better judge the proper role of the FBI in the future.

An excellent example of this commitment is the fact we have reduced the number of our domestic intelligence investigations by 64 percent since July 1973.

As of July 31, 1973, we were handling 21,414 such investigations. By October 30, 1975, we had reduced that total to 7,686 pending domestic intelligence cases—a decline of 13,728 cases.

I think this is solid evidence of our responsiveness even prior to the drafting of proposed guidelines for such investigations. It is not necessary for a house to fall on us—much less two houses.

So I feel compelled to raise this question:

Will the good of the country be better served by continuing an extraordinary degree of direct congressional access to FBI information, or will it be better served by placing emphasis on requiring the FBI Director to be fully accountable to an oversight committee through sworn testimony?

I think the Congress and the FBI can perform their respective tasks with the most advantageous results by the latter means.

Now, also, I would strongly suggest that consideration be given to the employment of a permanent, professional staff—to the extent necessary—for any proposed oversight committee, with stringent clearance procedures.

This would allow the staff members to become thoroughly knowledgeable concerning the FBI's procedures and practices and, thereby, facilitate the work of the committee with proper security.

As we seek to define the proper degree of oversight, or review, of FBI operations, we must consider the administrative burdens such oversight involves.

I should point out that in responding to requests of the two select committees, the FBI at its headquarters alone expended 3,976 days of agent personnel and 1,964 days of clerical personnel from April through December 1975—manpower diverted from investigative duties.

In dollars and cents that represents a cost of approximately \$640,500. Additionally, the cost of conducting background investigations of committee staff members had reached about \$393,699 through last month.

Now these figures do not take into account personnel utilized in responding to requests of other committees of Congress, which have substantially increased during the past year.

Many of the requests we receive from Congress are duplicative in nature. Though we diligently try to respond fully and accurately in each and every instance, it is a time-consuming and costly chore.

And I feel strongly that the interests of the American people would be best served by Congress consolidating its oversight functions.

The manpower of the FBI is limited. With the increased burden placed on the Bureau by congressional committee requests and Freedom of Information Act and Privacy Act requests, we have reached the point where the Bureau's ability to perform its normal investigative functions has been impaired.

So I would urge you to consider these matters in your deliberations concerning oversight legislation. I assure you we will continue to cooperate to the best of our ability.

I can further assure you that under a Director held fully accountable and reporting at intervals to an oversight committee, the FBI can perform effectively and honorably.

Thank you.

Chairman RIBICOFF. Mr. Kelley, do you believe that there should be a congressional oversight committee handling intelligence matters?

Mr. KELLEY. I believe in oversight, Senator. I do not know whether you mean one which is separated from the criminal activities performed by the FBI or not. If it be fragmented, I do not believe that such should be done.

I subscribe to an oversight of both the intelligence activities in the domestic and foreign security and the criminal.

Chairman RIBICOFF. I do not think that it is anyone's intention to have the oversight committee oversee the day-to-day problems of domestic criminal investigations. But do you believe that there should be such an oversight committee in the counter-intelligence field.

Mr. KELLEY. I do believe that it is necessary that we do have oversight.

Chairman RIBICOFF. Mr. Colby testified last week that, after reporting to eight committees, he feels that the sooner such an oversight committee is created, the better off the intelligence community will be.

Do you agree with Mr. Colby?

Mr. KELLEY. I do.

Chairman RIBICOFF. In your statement on page 3 you state—and I quote you—that “some of the mistakes of the past were occasioned by direct orders from higher authorities outside of the FBI.”

Could you please tell us what mistakes and which higher authorities you are referring to?

Mr. KELLEY. I am referring to the requests, the orders that have come to us from members of the Department of Justice, the Attorney General, and these stem from the installation of some of our electronic surveillances and from programs that we have followed which have been with the authority of, and the approval of, those in this area.

There are not—I do not have a complete outline of them, but we do have instances where the FBI did not initiate these. The orders came from outside of our organization and from, of course, the White House on some occasions.

Chairman RIBICOFF. Do you believe that such requests have been improper under the authority of the FBI?

Mr. KELLEY. I do not think by any means that they come under the purview of the FBI.

Chairman RIBICOFF. What should the Director of the FBI do if he receives an order from the President or the Attorney General or someone in the White House staff that he believes is contrary to what his responsibilities and authorities are? What should a Director do under those circumstances?

Mr. KELLEY. First, I think that he should deliberate and talk with the Attorney General, if it be one not coming from the Attorney General, and get his determination. If it be one where there is some doubt, he should get it in writing. If it be one that he does not under any consideration nor as the result of deliberation wherein an effort is made to convince him, but he himself does not feel that it is advisable that he should withdraw, he should resign. And as I was once told, by Senator Byrd during confirmation, it is hoped that in such an instance that he would come to the oversight committee on the Congress and consult with them about what should be done under these circumstances.

Of course, that is a matter that the Director himself has to arrive at, and I am already committed to, and still subscribe, to the proposition that I am not going to give way just because it comes from higher authority.

Chairman RIBICOFF. If the President of the United States makes a request of you that you believe to be improper, and of course, he is your boss, you would feel honorbound under those circumstances to resign as Director of the FBI.

Mr. KELLEY. If it came to the final crunch; yes.

Chairman RIBICOFF. Do you believe that an FBI Director should have a definite term in office?

Mr. KELLEY. I have been asked this before. I am not uncomfortable under the present system where my term of office is from day to day. I do not believe that there should be any greater tenure than that.

Insofar as a limitation on how long he can be Director, I feel that 9 or 10 years is sufficient. I do subscribe to that.

Chairman RUBINOFF. You say also on page 3 that when Mr. Levi became Attorney General, he instructed you to report to him any requests or practices which, in your judgment, were improper or presented the appearance of impropriety.

Have you made such reports to Mr. Levi?

Mr. KELLEY. Yes, sir.

Chairman RUBINOFF. Are they confidential, or could you describe generally the nature and frequency of such improper requests?

Mr. KELLEY. Most of them have been in the area of COINTEL programs which we have discovered ourselves in some of our file reviews.

I can remember another where we determined that there were certain mail openings which current Bureau officials of headquarters did not know about until we accidentally discovered them. It was not a failure to inform us, as it was thought that this was an ongoing program that had been given official approval.

There was no thought that it was something that should be hidden.

We, in the top echelon of the FBI, were advised, and, therefore—they were new to us—they were also new to Mr. Levi and we informed him about them.

Chairman RUBINOFF. In your testimony, you stated that the Bureau has reduced the number of pending domestic intelligence investigations from 21,414 in 1973 to 7,686 by October 30, 1975.

How do you explain this? Were there too many investigations being conducted 2 years prior?

Mr. KELLEY. Senator, when I first came in, I talked with the man in charge of our Intelligence Division. That is the one where we handle the security matters, and it was our opinion, together, that there were too many investigations being conducted in the security field.

I asked him to review the bases on which we conduct our investigations. Obviously it became apparent that some of our fields of attention could be under close scrutiny. I felt some undue extensions of our investigatory capabilities and this was a continuing process, and the reduction was not something that was immediate, but extended from, I would say, the latter part of 1973 when we got ourselves lined up, right through to October, as it says in my statement of 1975.

We looked over why are we doing certain things, and it might well be, as is many times true in investigative circles, that you might get a little too concerned about something that on close scrutiny may not have been quite as alarming as it first seems. This is not at all unusual. It is, however, unusual that it comes from within and yes, as a result of the realignment of our goals—realignment of our procedures—our basis for investigating matters, we did bring about this reduction.

Chairman RUBINOFF. Thank you.

Senator Percy?

Senator PERCY. Thank you, Mr. Chairman.

Mr. Chairman, I would like to thank Mr. Kelley for his demonstrated desire and willingness to work with Members of Congress and to help us fulfill our responsibilities.

Former Attorney General Katzenbach testified last week that he often did not know what the FBI was doing. What is your own working relationship with the present Attorney General? Do you keep him informed of all major activities that the FBI is undertaking? Does he participate in deciding whether or not you undertake major undertakings?

Mr. KELLEY. Senator, we certainly keep him informed of any major program. I would say that perhaps we may, on occasion, over-inform him. We may tell him about things that are anticipatory as far as problems are concerned. We try to keep him fully informed.

For example, if there happens to be something we learn about that may cause press inquiries of him, we inform him of that. Many times they are made.

I just point this out inasmuch as we are trying valiantly to keep him informed.

Senator PERCY. When do you anticipate new guidelines for the FBI being finalized?

Mr. KELLEY. I cannot give you this response. It has been several months in preparation. I know that it has now been thrown back into the hopper for reevaluation.

I cannot tell you—perhaps Mr. Levi can give you better information in that regard.

Senator PERCY. As a followup on my first question, to be certain that I complete the record on it, can you think now in retrospect of anything in your term of office as Director of the FBI that you really should have advised the Attorney General of that maybe you subsequently did, but did not at the time?

Mr. KELLEY. I cannot think of anything, Senator.

Senator PERCY. I ask that, because Dean Rusk said that he subsequently has now learned of certain things undertaken in foreign countries by the CIA that he did not know at the time. I wanted to complete that record for you.

You talk about unlimited access to your files being dangerous. I do not think anyone contemplates that whatsoever. But I do not think either that you should be left in the position where just your word is the only thing that an oversight committee has.

What do you think is proper in this respect with respect to files?

Mr. KELLEY. I think that there should be a working arrangement between our people and whatever group might have oversight, and there is a strong requirement that there not be presentation of material which would first compromise a source of information, whether that be a citizen, a government, or an informant.

The confidentiality of the work done by the FBI is an extremely important thing. Names are not just all that reveal the identity. It may be that certain circumstances, when revealed, may pinpoint what might be the source of information. There might be also too great a proliferation of information about some activity of the FBI.

For example, we have, of course, warrantless wiretaps. We feel that there should be confidentiality of that. These have been authorized through the approval of the President and through the Attorney General's delegated authority in this regard.

I would say generally that if there be a reasonable basis whereby we can explain that it should be maintained confidential that it should be so maintained. On the other hand, we should extend ourselves in the spirit of cooperation to inform and to report on measures and if they want a review, that we extend ourselves to let them make such review.

Senator PERCY. You have been able to reduce your domestic intelligence investigations by 64 percent since July 1973. Can you tell us how you have done that?

Mr. KELLEY. By a review that we started in mid-1973 looking over the bases for our investigatory needs and our intelligence operations, and generally to take an inventory and say which should we continue, which should we now perhaps give additional emphasis, and we culled out, in other words, those which we did not feel were strictly productive insofar as meeting our commitments.

Senator PERCY. Did you find that you eliminated some of these, Mr. Kelley, because they were illegal? In retrospect did you look back and decide that the FBI should not, as a law enforcement agency, engage in illegal practices and investigations?

Mr. KELLEY. You know, when you speak of illegality, we have great difficulty. Sometimes, in the context of the time, you may open matters which later are determined to be perhaps possible civil rights investigations, invasions of privacy, or other background objections.

I do not know of any which, I would say, were actually illegal. I just do not recall any that would meet that classification.

Senator PERCY. Were some eliminated because they may have been borderline, and in retrospect you decided not to go ahead?

Mr. KELLEY. I would say that that is a possibility. In a strict classification or interpretation, they may be termed an invasion of privacy or rights or something of that type.

Senator PERCY. Were most of them eliminated because you felt that they were not productive, and, to use the phrase, they were not really cost-effective, for the amount of energy and effort put into them? Would they not have paid off?

Mr. KELLEY. I would say that would be two great and major reasons.

Senator PERCY. With the workload declining 64 percent, has there been any decline at all in manpower? Have you shifted manpower to other divisions—person power, excuse me, man or womanpower—have you shifted it to other divisions?

Mr. KELLEY. There has been some shifting; much of our so-called overload of manpower or investigative attention by this division has been picked up by the terroristic activities investigation.

Of course, we have had a great rise in that: Doubled each year. And, strangely enough, during 1975, it even increased more than that.

We had more terrorist-type bombings in 1975 than we had in 1974.

Senator PERCY. You mentioned the burden that has been placed on the FBI by the Congress.

I presume that there is not any question that the CIA could rightfully maintain that a tremendous burden is placed on it by the Congress now. I think, in retrospect and in fairness, part of the burden is unfair, unwarranted, and not cost-effective, that a large part of the burden is placed simply because we have recognized that we in Con-

gress failed the American people in the past. No one has more clearly admitted this than the Majority Leader of the Senate, Senator Mansfield, in his opening statement before the committee. We have to rectify that past failure.

We may overkill in a sense. I hope that we will not. I hope that we will go a prudent, moderate path and not overreact to the situation. But a large part of that burden is because we simply did not perform the function in the past and the American people know it, and they are holding us accountable for that.

I wonder if you could for the record, however, just give us a sense of your own personal burden, which worries me, both about the Director of CIA and the Director of the FBI.

How much of your personal time, since you have assumed office, do you think you have devoted to preparing for, giving testimony before congressional committees, and then following up on the testimony that has been given, or looking at the testimony being given by others?

Mr. KELLEY. I would say that about 25 percent of my time is consumed in going over testimony, reviewing material, acquainting myself with the progress of the various committee activities, in preparing myself for testimony, and in testifying; and I think that the others in the top echelon of the Bureau who are involved in this type of thing may have even more than this devoted in their time.

It has increased my work day considerably, and I find myself many times reading until the wee hours of the morning.

I am not complaining about it. I assumed this.

Much more time is devoted to doing my job now than ever before. Again, about 25 percent of that time is in this area.

Senator PERCY. Mr. Chairman, my time is up. Are we going for one more round of questions?

Chairman RIBICOFF. If there are more questions.

Senator PERCY. I have a few left.

I would like an answer to how much time you think is appropriate for you to spend on this activity.

I will wait until we come back.

Chairman RIBICOFF. Senator Brock?

Senator BROCK. Thank you, Mr. Chairman.

Would you clarify for me something you said earlier? With regard to the oversight function, I thought that you said that the oversight should include all FBI activities. If that is the case, you might be in some disagreement with those that say we should separate the oversight of the domestic operations, primarily FBI, from the international oversight function which would more relate to CIA.

Mr. KELLEY. Seventy-five to eighty percent of our time is on criminal activity. There is, on the other hand, a great interrelationship between our security people and our criminal investigations.

We may have a case where we need additional people in a security matter. We will call on some people in the criminal activities section.

It is true, on the other hand, we will have a big bank robbery or some big fugitive case. We may call on security people and have them do it.

We have difficulty in setting aside that portion of our budget which goes solely to the so-called intelligence activities. In the area of intelligence, we have quite a bit of work in the intelligence field in the

criminal work. We would suggest that it not be fragmented, and would hope that we could present all of our difficulties to one committee.

I realize that there is a thought that this thrust should be just toward security matters foreign and domestic. We have problems more than this.

I can see where it would be very helpful to us to have an overall overview or oversight which would take care of both of our branches.

Senator BROCK. The reason I asked the question, there has been at least some indication among Members of the Senate that they would like—at least some Members would like—to separate the intelligence from the criminal aspect, and give the oversight committee which this committee may create, jurisdiction over all intelligence, counter-intelligence, domestic and international intelligence, but to leave to the Judiciary Committee the principal oversight responsibility for the FBI.

I gather that you would not find that a very happy end product?

Mr. KELLEY. We report to the Appropriations Committee and they outline our programs. Under this possibility we would be reporting to an Intelligence Committee, we would be reporting to the Senate Judiciary Committee on general oversight. Right away we have three within the Senate.

Senator BROCK. If we did give this committee full and complete jurisdiction, would you also suggest that they have jurisdiction in terms of appropriations as well?

In other words, you would limit the oversight to one committee. It would have both authorization oversight and appropriation authority?

Mr. KELLEY. Senator, I am not really prepared to give you an opinion on that. I would say that probably this should be reserved to the Attorney General. Personally, of course, it would probably give us a closer definition of oversight and it might be that such a committee certainly could become best acquainted with our work and ongoing programs, but I do not know that I can answer well that particular question.

Senator BROCK. I am not sure that we can either. As a matter of fact, there are some of us that feel that rather than trying to define this thing too precisely, we should create an oversight committee and assign to them the responsibility of a study of the extent of the jurisdictional question. That may be the best thing that we can achieve at the moment if we are going to get any response.

Let me ask you one or two more questions, again in this same area.

I am reluctant to limit the right of an oversight committee in terms of access. I think that is almost something that we can do by experience, as we have with the Joint Committee on Atomic Energy.

There the experience has proven to be good and, I think, healthy for both sides, executive and legislative.

I am distressed by the leak of information that is ongoing now. I think it is extremely dangerous. Yet I find it difficult to find a way in which we would eliminate an oversight committee which may need some access in order to reach this definition of responsibility.

I do not know how we would do what you are suggesting, essentially depend on the Director and his testimony before the committee.

Mr. KELLEY. Under our recommendations, we conclude that there should be investigations and clearances granted to members of staff

that their numbers as well as others for the committee should be as limited as possible.

We feel that matters that might compromise our sources of information are those that are most important. I think, Senator, that probably we could start off in such a relationship being a little extended insofar as our own desires, we can be a little more open, and see how it works. I would hope that it would be sort of an open-end type of thing so that we could get some history of experiences.

I do not want to foreclose the right of review in this regard. I think, as a citizen, I am compelled to say that there should be a better flow of information than has been true in the past. I am willing to at least explore such a possibility.

Senator BROCK. That is really what I am reaching for, and I appreciate it. We are treating it as if it is going to be de novo, every 6 months. It is not. You are going to create an expertise in this committee and the staff a knowledge of the general problem area, and I think these matters will begin to settle up as it gains maturity and experience. I am reluctant to eliminate it now, because I think we may create an adversary relationship, which I do not think is helpful, where, as an alternative, if we kept it fairly open, I think a development of that experience would lead to a good relationship, as we have done with the Joint Committee on Atomic Energy earlier.

Mr. KELLEY. There are misunderstandings why we think things are confidential. Take, for example, a small thing, a release of our telephone directory. It is not generally understood that, by virtue of the release of the telephone directory, you therefore list the identity of our agents. They are listed in the telephone book. Thereafter, they get a lot of crank calls.

I never did release my address, and as soon as it was listed—and it was listed, of course, in the Congressional Record—I am not complaining about this—I started receiving crank mail at my home, and some of it was on postcards, some of it my wife read, it was not the best thing.

People do not realize that we try to protect it for reasons that we could possibly explain in an atmosphere of cooperation with such a committee, and I would look forward to that opportunity.

We have not communicated properly, possibly. If it is determined that this is too farfetched, all right, we will drop it. We are willing to discuss it.

Senator BROCK. Thank you. My time has expired.

I think what I am saying is that there is a clear distinction between a one-shot investigatory committee which is trying to get short-term information and a continuing oversight committee with a developed relationship on a maturing basis.

Thank you, Mr. Chairman.

Chairman RUBIOFF. Senator Weicker, while it is your turn, since Senator Percy had used up his time, he has requested a few more minutes, if you would yield to him.

Senator WEICKER. I yield.

Senator PERCY. Regretfully, I have a witness upstairs waiting in the Foreign Relations Committee. I was anxious to follow up, Mr. Kelley, on what proportion of your time do you think is appropriate and proper that you should devote to congressional oversight?

We have the same objective to reduce the burden on your department because of the duplicative activity of congressional committees.

What proportion do you think is appropriate for you to spend?

Mr. KELLEY. I never really considered it, but I would say that during my ordinary, everyday operations, I should keep this in mind and should review each program with the thought prepared to discuss it with an oversight committee, maybe 5 percent, just a ball park figure.

Senator PERCY. That is a goal I am not sure we will ever achieve, but certainly, if we can cut it in half, it will help, because your principal duty obviously, is to administer a very able department and agency.

The thought has been orbited—I threw it out originally—to just try to cut in half congressional involvement in the area of intelligence. A person has to have a tremendous amount of knowledge to properly oversee and legislate in this area. Yet we are not specialists in this field, but we are dealing with specialists in the law enforcement field. Could we cut the workload in half if possibly we can consider in this one oversight committee, giving that committee both authorizations and appropriations authority? Then the FBI would only have to go before one committee in the Senate and one in the House, and have the job done with? You could then thoroughly inform, say, a group of nine Senators that would rotate in that position.

Would that, in your judgment, be of material assistance and help if we could work it out internally?

Mr. KELLEY. If we could, Senator, in one committee, I feel this would be advantageous.

Senator PERCY. I have long proposed that the Attorney General be taken out of politics and not be permitted by procedure or precedent, just as the Secretary of Defense and Secretary of State, to participate in politics as such.

The Attorney General has been a politically oriented office, many times the Attorney General being the campaign manager.

If the Director of the FBI is not a political position, and it should never be permitted to be so, you think it would be a good idea for the Attorney General not to engage in party politics while he is holding that office?

Mr. KELLEY. I have never had experience with it since I have come here, in any dealings with me or with the Bureau by the three Attorneys General under whom I have worked. There has been no indication of political influence.

Senator PERCY. Do you suggest consolidation of congressional oversight of the FBI? Should that be done by the same committee overseeing agencies dealing with foreign intelligence, in your judgment?

Mr. KELLEY. In my judgment, all of the operations of the FBI would advantageously be joined in one committee.

Senator PERCY. One committee?

Mr. KELLEY. Yes, sir.

Senator PERCY. Could you explain, in layman's terms, the difference between foreign and domestic intelligence and criminal cases as managed administratively by the FBI? I ask that with the understanding that criminal activities involving foreign powers are not necessarily handled in the FBI's foreign intelligence division. For example, if another country were to finance terrorist acts in the United States, the entire case might be handled in the Criminal Division. Therefore, it

would help us in our understanding if you could differentiate between what activities are handled by each of those bureaus. If you would like to do that for the record, to make it more complete, I would certainly accept that.

Mr. KELLEY. I would prefer to prepare this in a response to you, and will do so.

Senator PERCY. Mr. Kelley, finally, FBI activities seem to be at the heart of one of the gray areas of oversight. I think we are in general agreement that Congress should create a committee that would oversee the CIA and NSA.

What aspects of the FBI that should be looked at by this committee is another matter? What are your views on this?

Mr. KELLEY. Could I also give you that response—may I respond to that in writing also?

Senator PERCY. Yes; you certainly may.

[The information referred to and subsequently supplied follows:]

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, D.C., February 4, 1976.

Hon. ABRAHAM RIBICOFF,
Chairman, Committee on Government Operations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: During my appearance before your Committee on January 26, 1976, Senator Charles H. Percy asked two questions for which responses were to be furnished by me for the record.

Senator Percy asked and I quote, in part, "I think we are in general agreement that Congress should create a committee that would oversee the CIA and NSA. What aspects of the FBI that should be looked at by this committee is another matter. What are your views on this?" I feel that it would be appropriate for the FBI to respond to such a committee concerning those investigative activities or operations conducted in concert with or on behalf of the CIA and/or NSA.

Senator Percy also asked and I quote, in part, "Could you explain in layman's terms the difference between foreign and domestic intelligence and criminal cases as managed administratively by the FBI?"

"I ask that with the understanding that criminal activities involving foreign operations are not necessarily handled in the FBI's Foreign Intelligence Division. For example, if another country were to finance terrorist acts in the United States, the entire case might be handled in the Criminal Division. Therefore, it would help us in our understanding if you could differentiate between what activities are handled by each of those bureaus. If you would like to do that for the record, to make it more complete, I would certainly accept that."

The FBI has a wide range of investigative responsibilities which fall into three major categories: general criminal, domestic security, and foreign counterintelligence. Specific responsibility for each function is vested in the FBI by statute, Presidential directive and instructions of the Attorney General. The FBI has primary investigative responsibility for over 100 criminal statutes. These investigative matters are administered by the General Investigative, Special Investigative and Intelligence Divisions of the FBI.

The General Investigative Division handles violations of criminal statutes relating to white-collar crime, bank robbery and interstate transportation of stolen property, among others. The Special Investigative Division is responsible for investigations concerning anti-racketeering statutes and organized crime. Internal security cases are handled by the domestic intelligence branch and foreign counterintelligence branch of the Intelligence Division. The domestic intelligence branch closely follows the activities of extremist groups and individuals who advocate and/or participate in violence as a means of undermining our form of government; the foreign counterintelligence branch directs investigations to identify, penetrate and neutralize agents and officials of communist governments who engage in espionage and intelligence-gathering activities in the United States.

The investigative responsibilities of these divisions overlap one another to some degree and are managed in the following manner. If a violation of law occurs, the division with enforcement responsibility for the statute in question supervises the investigation. For example, an investigation of a case involving interstate transportation of stolen property, namely theft of a secret manufacturing process and subsequent attempts to sell it to Soviet-bloc nationals, was handled by the General Investigative Division and closely followed and assisted by the foreign counterintelligence branch of the Intelligence Division.

You asked me and I quote, in part, "You say also on page three that when Mr. Levi became Attorney General, he instructed you to report to him any requests or practices which, in your judgment, were improper or presented the appearance of impropriety. Have you made such reports to Mr. Levi?"

I responded that we had made such reports. You then asked, "Are they confidential, or could you describe generally the nature and frequency of such improper requests?"

I responded describing various programs or practices the FBI had reported to the Attorney General on its own initiative. To complete the record in this regard, I would like to say the FBI has not received what I believe to be improper requests and, therefore, it has not been necessary for me to make a report to the Attorney General.

Sincerely yours,

CLARENCE M. KELLEY, *Director.*

Senator PERCY. I think that that winds up my questions. I would simply like to say, having known Attorney General Levi for a quarter of a century when I was a trustee of the University of Chicago, I think the tone and attitude that he is establishing and the relationship he has established with you is good. The relationship between the Attorney General and the FBI Directors of the past has not been fully satisfactory and fully cooperative and a cause of concern. I think the relationship that has been established has been an outstanding accomplishment. I think your testimony to that effect here has been very important. I certainly commend both you and Attorney General Levi, because a great deal has been accomplished already.

Chairman RIBICOFF. Senator Weicker?

Senator WEICKER. Thank you, Mr. Chairman.

I notice in your statement you make mention of the fact that since 1975, or April through December 1975, a great amount of time, effort, and money was expended on responding to congressional inquiries, and so forth.

I think we both might also allude to the fact that this is directly attributable to the fact that here was no congressional inquiry for many years before that, and what in fact you have seen is an extreme reaction to an extreme situation.

As a matter of fact, as I understand it, and prior to the impeachment inquiry, neither the House nor the Senate Judiciary Committees held any hearings on FBI oversight. Is that correct, to your knowledge?

Mr. KELLEY. I do not recall, Senator.

Senator WEICKER. I believe that was before your time, but that is the record.

Mr. KELLEY. I am thinking only during the time that I have been here. I do not recall just when we first reported to the oversight committee. It was during the time that Mr. Saxbe was Attorney General. We appeared three times. Prior to that, I do not know.

Senator WEICKER. I think it is important to point out that I am sure the American people are just as appalled about your being over-

burdened with congressional inquiries as they are with no congressional inquiries, but that is the record. There is nothing in between.

I think that is important to point out as we try to devise some system, some apparatus, to bring balance to all of this, that we need the FBI.

As I said the other day, we need a CIA. There is no reason why a choice has to be made between zero and 100 percent insofar as it is using up your time, the CIA's time, or any of our law enforcement agencies' time.

My concern, believe me, Director, is not that you are going to be overburdened with oversight. As I have indicated, unless this Congress acts very shortly, the whole thing is going to be forgotten, and we are going to go back to zero again.

That is a far greater danger in my book than your being overburdened.

I would suggest to you, it is very strange to say, that I would hope that you along with Mr. Colby and others in the law enforcement community would fight very hard to see this oversight legislation implemented, because on that depends the survival of your agency and on that depends the restoration of confidence as far as the American people are concerned in the law enforcement and intelligence agencies.

I fear the bureaucratic foot dragging is going to go on around here 2 to 5 years from now. We will be right back at square A, except the next time that any other abuses get uncovered, it will be the end of your agency. There will be no way of coming back in the room to construct something that makes sense. This is my concern.

Mr. KELLEY. I went on record during my confirmation sponsoring oversight, and I still feel that it is a very viable and proper procedure. I have no objection to it whatsoever, and I welcome it.

Senator WEICKER. I notice you say you favor a new oversight committee. Is it your feeling that the present oversight mechanisms are not adequate?

Mr. KELLEY. I hope I have not indicated that I am critical of the present oversight. I hope that we can have a centralized oversight whereby our intelligence and our criminal investigatory responsibilities are best included in this one under the projected possibilities that the Bureau would be fragmented, and we would have an oversight of the security of the national counterintelligence field and the criminal field maintained in the present oversight system.

I would hope that it would be together.

We do report to the Appropriations Committee and we do report to the Judiciary Committee on oversight. If it were fragmented further, we would have three oversight committees.

Senator WEICKER. Do you feel the present system of oversight as embodied in the House and Senate Judiciary Committees should be supplanted by a new oversight committee, or are you satisfied with the present system?

Mr. KELLEY. I would reserve the final determination to consultation, as I would want to do, of course, with Mr. Levi to get together and do this.

I would say, primarily, our goal is to have it centered not in any particular committee. I think that is the responsibility of Congress,

actually. What we want to do is not fragment it, not to proliferate it but to have it so that we could have one group to which we could go for consideration of our problems and outline our procedures.

Senator WEICKER. I can appreciate, Mr. Director, that you still have to work with the House and Senate Judiciary Committees. We do not want to ruffle any feathers. We want to plot a future course. We are not trying to find out how we can live with the past.

The difficulty is, as I perceive it, not that the mechanism was not there for oversight—it was there. The problem was that it was a secondary function of the particular committee, in this case, the Judiciary Committee, something down the line.

Do you feel that your agency and its activities are of sufficient importance that that should be a full-time job, rather than a secondary job, for a congressional committee?

Mr. KELLEY. I responded to a question asked by Senator Percy about how much time I thought that I might be devoting to the oversight requirement. I thought about 5 percent. That is just a ball park figure.

I do not think that that would necessarily mean that one committee would be set aside for just that type of deliberation. I think that if it were to include all of our activities, criminal as well as security, that it might take a little more but still, I do not think that things come up that frequently where it would be a real heavy task for any committee.

Senator WEICKER. You understand what we are contemplating here would be a committee whose attention would be directed toward the FBI, the CIA, the law enforcement intelligence community? It would not just be the FBI; it would also be the CIA.

What I am saying and what I think others are trying to get across is that it is sufficiently important to this Nation, to its life and to its Constitution that intelligence oversight is a full-time job and not a secondary job for some other committee, be it the FBI which is a secondary function of judiciary, or the CIA, which is a secondary function of armed services.

This is a primary function. At least, I do not find it a primary function of law enforcement intelligence. That is why my question to you, whether you are satisfied with the present system, which obviously has not worked in the past, with a warning, or whether we are best just having one committee that would work with these law enforcement intelligence agencies and start from scratch and once again try to rebuild confidence.

It really does not make any difference what you think or what I think or what Senator Ribicoff thinks or our colleagues here think. The fact is that the American people have lost their confidence. That is the group we have to reach.

Whether I am satisfied that you are a fine man with great integrity and a fine Director, it does not mean anything, and your opinion of me, that is not important.

What the American people think is what is very important. That is what is jeopardizing your agency now and, indeed, the Congress.

Mr. KELLEY. I would construe anything which is developed by Congress as something which we would certainly try to work under. We will not complain. You will not have any beefs from us. I told Senator

Brock that I would certainly work as best we can with the system that is devised. I repeat that to you, too.

I am not going to argue about it. I would like to work with you just as closely as we can.

Senator WEICKER. I appreciate it. I am not trying to lay all of this at your doorstep. I think Senators Brock and Ribicoff and I were talking earlier, and we are going to try to ply these things loose in the Congress. They are the ones that do not want any change.

That is why we are trying to get all the help we can publicly.

Please understand what I think all of us here are saying is that we are not against your agency. We want to see it survive, but it cannot survive unless the American people feel that they have a handle on this policy.

Thank you.

Chairman RIBICOFF. Thank you very much.

Senator NUNN?

Senator NUNN. I have no questions.

Chairman RIBICOFF. Senator Brock, do you have any more questions?

Senator BROCK. No.

Chairman RIBICOFF. Thank you very much, Mr. Kelley. It may very well be, as we proceed to mark up this legislation, that we may have occasion to talk to you and your staff. I would hope that you would be available to us in the future.

Mr. KELLEY. We will be available.

Chairman RIBICOFF. Thank you very much, Mr. Kelley.

Mr. McCone?

We thank you very much, Mr. McCone, for coming from a conference to be with us. You have had great experience in this entire field. You have been the Director of CIA from 1961 to 1965. I have read many of your writings in the past few months and I am sure that what you have to tell us could be of great help to the committee.

Would you please proceed, sir?

TESTIMONY OF JOHN McCONE, FORMER DIRECTOR, CENTRAL INTELLIGENCE AGENCY

Mr. McCONE. Thank you very much, Mr. Chairman.

I appreciate this opportunity to discuss congressional oversight of our national foreign intelligence activity with you and members of this committee.

I apologize that I could not meet the request of your staff to supply a written statement, but I have been out of the country until Saturday and I did not have time to prepare one.

As you know, it has been some years since I retired as Director of Central Intelligence. As I reflect on my years of office, I can state without reservation that the oversight by designated committees of the Senate and the House afforded me and others in the intelligence community constructive guidance in all matters discussed with them, which included intelligence operations and also covert political and paramilitary operations.

During those years, I regularly reviewed the agency's budget with a designated subcommittee of both the Senate and House Appropriations

Committees, and either received approval of the budget submitted or adjusted our requests to meet the committees' desire.

Information given to these oversight committees remained within the committees.

Classified and sensitive information was not passed to other Members of the House or the Senate, and certainly not to the press.

In fact, few, other than the committee members and their very limited staffs, knew the meetings were held.

Unfortunately, there have been excesses—few in number—some of them unauthorized and apparently unknown to higher authority in the executive branch of the Government and not reported or sanctioned by the designated committees.

I could rationalize certain excesses, but I feel confident that such excesses will not recur, nor will actions be taken by the dedicated and competent men and women of the intelligence community that exceed established guidelines, once appropriate oversight is established.

May I add some of the actions criticized as excesses were really not excesses, but were authorized operations undertaken in support of national policy. I will discuss this in a few minutes.

I sense with the passage of time these congressional oversight arrangements now appear inadequate. Therefore, consideration is now being given to restructuring congressional functions.

Since you are directing your attention to this matter, I am pleased to have an opportunity to advance some recommendations for your consideration and expand on my views which recently have been publicized.

It is my strong belief that any oversight arrangement to be effective must be preceded or at least accompanied by the establishment of a consensus as to what position the United States as the most powerful exponent of freedom should take in today's world.

Such a consensus was established in the late 1940's. Specifically, it was then recognized that our Nation, as the tallest pillar of freedom, should use its moral and political leadership, its economic strength and if need be its military power to assist nations throughout the world or political entities within nations whose freedom was threatened by the constant advances of international communism, supported, at times, admittedly supported from the center of Communist power.

It was in keeping with the consensus reached in those days, agreed to by both the executive and the legislative branches of the Government, that we as a nation went forward both covertly and overtly with activities that the CIA either handled exclusively or participated in with other departments of government; operations ranging from the Truman doctrine in Greece and Turkey to the landing of 5,000 Marines in Lebanon when that country was threatened with a Communist takeover, to the interruption of the well-laid Communist plan to establish a controlled state in Guatemala, both directed by President Eisenhower and on to the defeat of the Communist-directed activities in Chile in 1964, sanctioned by President Johnson.

Many other actions by our country, details of which I will not belabor, were in keeping with the consensus that I referred to.

All of this went forward with the direction and approval of the President of the United States, concerned Cabinet officers, and the Congress, through the designated committees that I have mentioned.

If this consensus is now to be reaffirmed, doing so would serve importantly in this committee's efforts to establish appropriate intelligence oversight arrangements. If, on the other hand, our Nation no longer favors assistance to those whose resources are not sufficient to meet the Communist threat and thus preserve their freedom, then this should be known and this Nation's foreign intelligence organizations should be ordered to conform to a new and different philosophy, and not that adopted in the late 1940's and supported successively by five Presidents and both Houses of Congress.

I am not speaking of recreating the cold war. I am not opposing détente but as a private citizen with a background of experience in foreign intelligence matters and with knowledge of the subversive activities of our adversaries, I view with alarm the tragedy of Portugal and the anguish of Angola.

Communist efforts to influence the minds of people throughout the world, and the Communist determination to bring more and more governments under their domination did not disappear as the result of friendly visits between the leaders of the free world and the Communist world.

Communist intentions have never been stated with greater determination than Brezhnev did in his talk in Poland on December 9, 1975.

To turn to the subject of this committee's concern, it is my recommendation that you consider the establishment of a powerful Joint Committee of Foreign Intelligence and endow that committee with the exclusive and complete responsibility for oversight of the foreign intelligence community. Since matters of concern of such a committee would involve both foreign and military policy, I would recommend that the chairman and senior minority member of the Senate Foreign Relations Committee, the Armed Service Committee, the House International Relations Committee and the House Military Affairs Committee be made members of the joint committee.

Additional members, three to five from the Senate and an equal number from the House, appropriately divided between the majority and the minority parties, and not necessarily members of the four committees mentioned, could also serve.

This committee should be fully and currently informed of foreign intelligence actions and operations. Procedures for the transmission of such information can be readily developed between the committee and the executive department of the Government once the committee is established.

With such an arrangement, the membership of both the Senate and the House could be assured that agreed policies established by the concerned committees were being followed, restraints observed, and hence oversight by such committees would constitute satisfactory oversight of the Congress as a whole.

Under such circumstances it would seem to me unnecessary that information given to this joint committee be passed to other committees or other individuals of either House.

This committee should, in my opinion, be adequately staffed and the staff cleared for all operations of the Central Intelligence Agency and the entire intelligence community. Understanding must be reached that the confidentiality of sensitive information given to this committee

and its staff will be preserved, both in the present and in the future, and appropriate penalties for unauthorized disclosure be developed.

I now favor this arrangement over separate committees for a variety of reasons.

First of all, Members of the Senate and the House of Representatives will feel assured that their selected and trusted representatives on the committee will be receiving the same information. This has not always been so in the past.

Second, a single staff could work more efficiently, more economically, and develop a closer working relationship with units of the intelligence community than would be possible by two staffs.

Furthermore, the dangers of leaks of sensitive information would be enormously reduced.

I can speak with some background and knowledge of these matters because of years of close relationship with the Joint Committee on Atomic Energy for, as you know, I served as Chairman of the Atomic Energy Commission for a number of years.

Naturally I realize that all of you are disturbed about leaks. They seriously impair our national security interests. They also can endanger and perhaps totally extinguish the CIA's liaison relationship with the intelligence communities of other nations. Through the years, these relationships have been exceedingly important in the conduct of foreign intelligence operations and the tracking down and apprehending of hostile agents and foiling efforts targeted against us in the handling of defectors and a variety of other ways important to the counterintelligence activities of both the CIA and the FBI.

If leaks persist, as Director Colby so forcefully discussed on Friday, we will soon be isolated and might lose the invaluable foreign liaison arrangements.

As I have said, for foreign intelligence operations to be effective they must, by their very nature, be cloaked in secrecy. A free society such as ours finds this difficult to accept, but in my opinion, it must accept the cloak.

The congressional oversight plan that I have discussed and several changes that I have recommended to the executive branch of the Government will, if accepted, help to develop an understanding in the minds of the public and the press that our Nation's entire foreign intelligence service can play its part to assure the well-being of our Nation, and in doing so, confine its operations to standards designed by the Congress.

Anyone who has been seriously connected with the responsibilities of our national securities would hope that the prolonged and painful review of the work of the Central Intelligence Agency and the foreign intelligence community as a whole will end up preserving an organization that can serve our security needs and yet rest comfortably within the American political philosophy.

Thank you.

Chairman RIBICOFF. Thank you very much, Mr. McCone.

Mr. McCone, from your experience, do you think that this oversight committee should have prior notice of covert operations?

Mr. McCONE. I think that if the confidentiality that I have advocated is observed and is agreed to so that when matters are discussed with this committee they will remain within the walls of the commit-

tee room, then I think the question of whether covert operations should be discussed in advance or concurrently, is academic.

In the past, I might say in the past, sir, I discussed a great many covert operations of a political nature, paramilitary nature, with the designated committees of both the House and the Senate in advance.

Chairman RUBINOFF. You did notify in advance, and you feel basically that it would be a good policy?

Mr. McCONE. It was not a policy to do that in all instances, but in many instances it was done.

Chairman RUBINOFF. Let us take Angola. Here we have a situation where the President and the Secretary of State are deeply disturbed to suddenly find a very strong, almost 2-to-1 opinion in the Senate against the Angola operation, and yet, if the Secretary of State or the CIA Director had discussed this with an oversight committee, they could have learned very rapidly that public opinion, as reflected in the Senate, was overwhelmingly against an Angola operation.

You cannot keep an Angola operation secret under any circumstances. It is too large, with too much money, too much manpower involved.

So there is something to be gained by getting public opinion through the Senate, in a Senate oversight committee.

Mr. McCONE. Well, I think that a situation such as Angola could have been discussed with a committee in advance, asking that the information remain with the committee. The Joint Committee, if it is constituted as I proposed, then the views of both the committee concerned with foreign relations and the committee concerned with military affairs would be reflected by that Joint Committee.

Therefore, I do not think the discussion should necessarily go outside of the committee.

If this is an overt supply operation of arms, there are some reasons to believe that it should be made public. However, it has been my observation, Mr. Chairman, that many of these matters, when they are made public, the fact that the information is made public causes an escalation of the problem.

I have found in the past that where an operation was carried on covertly and in secrecy even after discussion with the appropriate committees of the Senate and the House, then it did not result in an escalation of the effort.

Chairman RUBINOFF. Mr. McCONE, Secretary Rusk was here last week, and of course, you were Director of Central Intelligence during his tenure as Secretary of State.

He testified that he had been rather surprised in the last year or so to find that he was unaware of important matters of foreign policy that he thought he had complete knowledge and awareness of as Secretary of State. I do not know if this happened during your tenure or not.

How would it come about that an important matter affecting the foreign policy of the United States would be kept from the Secretary of State?

Mr. McCONE. I do not understand that.

I would like to make a little correction. Secretary Rusk was Secretary of State during the entire years of my service. I was not Director of Central Intelligence during his entire years.

Chairman RIBICOFF. I know that. 1961 to 1965.

Mr. McCONE. I know of no instance during my tenure when the Secretary of State was not fully informed on matters. I had a practice of meeting with him every Sunday morning when he was in the city and privately reviewing matters with him. I was very meticulous to see that he was informed because of his responsibility, and second, Secretary Rusk himself was a very knowledgeable man in areas of my concern, and I always valued his advice.

Chairman RIBICOFF. I have the advantage of having advanced reading of Mr. Clifford's testimony, and you have not. I would like to ask you a question based on Mr. Clifford's testimony.

He points out that the Director of Central Intelligence was given the task of operating the CIA and was also given the responsibility as chief intelligence officer for the overall coordination of the Nation's intelligence operation. He says in his opinion that this plan has not worked because there are nine separate intelligence agencies and all are really equal.

He recommends that Congress create a new position which could be called Director-General of Intelligence. That person would be the chief adviser to the President on intelligence matters and would also be charged with the duty of seeing that the various agencies operated effectively and complied with the law.

In other words, in that chart, there, of the national intelligence community, Mr. Clifford would put a different man in that Director of Central Intelligence box, separate and apart from the Director of Central Intelligence Agency.

What would your comment be from your experience as to whether the same man should hold both posts?

Mr. McCONE. In my opinion that a man who is the principal intelligence adviser to the President should have broader responsibility over the intelligence community as a whole than the Director of the Central Intelligence Agency now holds.

To go into the history of this just a little bit, Mr. Chairman, when I was appointed Director by President Kennedy, he issued a letter extending to me authority for the coordination of the activities of the intelligence community. He did not give me actual control over the seven or nine intelligence units, but he asked me to coordinate their activities. This I did to the best of my ability through the U.S. Intelligence Board.

We met weekly and controlled a great many actions in the intelligence community.

However, you have to realize that it is very difficult for a man outside of the military, for instance, to inject absolute control over NSA, which in those days was 80 percent staffed by military and the Secretary of Defense was the executive agent.

Great problems arose in connection with the national reconnaissance operation: The photographic satellites and so forth. It is very difficult from a structure of any department of Government to have an outsider control a unit in that department, whether it be State or Defense or what.

However, through the years, that responsibility has been expanded. President Johnson added somewhat to my responsibilities. President Nixon added significantly to the responsibilities of my successors.

I believe that the creation of a Director-General, or whatever you might call him—I had a little bit different name for him—whatever you call him, could have a great deal of control over units of the community. But you have to realize, for that man to be effective and to be a useful adviser on intelligence matters to the President, he has to have troops, he has to have an organization, he has to have information come to him. That has to come from the one organization that is established and is competent and is free of parochial interests, that is, the Central Intelligence Agency.

What I advocate is that the Director-General—that is a good name; I am pleased to hear it—be established, be given two deputies, one of whom would run the Agency under his general policy arrangements and with the staff of the Agency available to him so he would not create another bureaucracy in Washington and a second deputy who would be solely responsible for supervising and coordinating efforts, at the same time, respecting the fact that the Secretary of State has to be the final authority on his intelligence organization, and the Secretary of Defense has to be the final authority on his own. Otherwise, I think the confusion would be incredible.

Chairman RUBINOFF. I think what Mr. Clifford is driving at is that if you had such an individual directly responsive to the President and the National Security Council—not as a bureaucracy, but as a small, tight-knit, very able group of men—that this Director-General would be in the position where the President would know what was happening in the whole panoply of agencies. Then we would never have a situation, I assume, where the Secretary of State was not aware of a major operation.

I would guess that this is probably what Mr. Clifford has in mind. We will have an opportunity to talk to him later.

Did you want to comment?

Mr. McCONE. I think that is probably true. You know, in the tradition of the intelligence world, compartmentalization is very important, and I did a very great deal during my years to break down compartmentalization. I found that compartmentalization governmentwide, and also there was a vast amount of compartmentalization within CIA itself.

As a result, certain operational matters were so compartmented that the analysts had no access to them, nor were they able to appraise a success or failure of the proposed operation; that was extinguished almost immediately when I came in.

I can say, just in passing, that the Bay of Pigs operation which was highly compartmented, had been analyzed by just three or four analysts that operation would never have gone forward, because the answer would have been—and we did a post mortem on it—the answer would have been that the people in Cuba were not at that time in April 1961 so disenchanted with the leadership of Castro that they were ready to lay down their arms and embrace 1,400 or 1,500 of the brigade that were attempting to come ashore.

That may have developed later, but at that particular time, in the view of many analysts, was untimely.

Chairman RUBINOFF. Thank you.

Senator Percy?

Senator PERCY. Mr. McCone, I would like to state for the record the great service that I think you have performed for this country during your tenure in office. You came in at a very difficult time and you performed in a highly commendable way. I think your testimony today can be invaluable.

I would like to first ask about the problems that someone who has not grown up in the CIA assumes when he takes over the direction of the CIA, as is proposed in the case of Ambassador Bush.

What kind of problems would he have in gaining access to information and gaining the confidence of the intelligence community, both cooperating governments abroad, agents, et cetera, and his own internal staff?

Mr. McCONE. That is very difficult, because the Central Intelligence Agency is a deep and complex organization. I had a particularly difficult problem because the organization was in somewhat of a disarray and it necessitated the replacement of every single deputy and a great many division heads and station chiefs.

Senator PERCY. That is why I asked the question, because you came in a time of great stress, as George Bush has.

Mr. McCONE. It takes a great deal of work. It is very hard to develop.

I do feel that Mr. Bush's first problem is going to be to surround himself with competent men that have total allegiance to him, not only as his Deputy Director, but as his General Counsel, which is most important, and his Inspector General, and his immediate executive staff.

Then he has to pick his way through the building and gradually, by briefings and by information that comes across his desk, he will be very knowledgeable.

Senator PERCY. Do you see any reason why with his background, both in the Congress and in the diplomatic corps where he obviously has worked with Agency personnel, he cannot grasp ahold of this, take command, and be in charge?

Mr. McCONE. I see no reason whatsoever, none whatsoever, sir.

Senator PERCY. Do you think a new oversight committee should include domestic and foreign intelligence in its oversight, or should we just have one committee that deals with foreign intelligence?

Mr. McCONE. I think you should just have one committee dealing with foreign intelligence.

Senator PERCY. Not get into domestic?

Mr. McCONE. Not get into domestic.

There has been some talk about whether such a committee should also have oversight over the counterintelligence responsibilities in domestic areas. You might give some thought to that.

I can argue it both ways, because those in the FBI who are responsible for foreign counterintelligence are also responsible for a great many domestic operations which come under the Judiciary Committee and others.

I think it would be rather complicated.

We solved, I might add, the problem when I was there of the interface between the FBI and the CIA by having FBI men located in Langley. This I worked out with J. Edgar Hoover and was able to do

so because of a close personal relationship that I had with him, and it went along very well.

There have been times through the years that that relationship was not as compatible, but fortunately for me, it worked out during my years satisfactorily.

Senator PERCY. I wonder if you could describe the problems that you feel the Agency is going to have in the future with the new access to information. Mr. Kelley mentioned this morning the difficulty that would be experienced if a foreign government felt that it gave information, it might be made public at some time.

Obviously, the difficulty is apparent when a Member of the U.S. Senate, the newspapers revealed this morning, spoke what he thought was in confidence to the CIA but his thoughts were committed to a memorandum and printed in the paper and subpoenaed by the House committee.

What are the problems involved here, and how do we resolve these problems when it is a new ball game in a sense?

Mr. McCONE. There is only one way to resolve it, Senator Percy, and that is to constitute this committee in such a way that sensitive information given to it remains within the walls of the committee and does not go outside.

I said before you came in that I reported frequently, unfortunately not regularly at appointed hours of each week, but frequently, to designated committees of the House and the Senate, and there were no leaks, and the information given to those committees did not go outside of the committee room.

Mr. Colby told me that certain sensitive information under existing regulations, he has had to appear before as many—I think he mentioned 60 Senators and 150 Congressmen, and, of course, no information given to that many people can be considered to be held in confidence.

So that I feel that an oversight committee constituted as I suggested with senior representatives of the armed services and the foreign policy committees of both Houses would insure the Senate and the House that the foreign intelligence community was functioning consistently with the policies established by both of those committees, and presumably, the policies of our Government.

Therefore, I see no reason why sensitive information must go outside, and I would strongly urge that in establishing this oversight committee—and I would hope that you would establish one which is very powerful—you will review recent legislation concerning disclosures and modify them to the extent necessary to preserve the confidentiality of our foreign intelligence.

Senator PERCY. Do you agree that IRS, FBI, and Drug Enforcement Administration, perhaps, need more intelligence oversight by the Congress?

Mr. McCONE. Would you repeat the question?

Senator PERCY. Do you agree with the premise that such agencies as DEA, FBI, and IRS that have investigative units do need to have alert, vigorous intelligence oversight by the Congress?

Mr. McCONE. No question about it. I strongly urge it, and the reason that I do so is that I think we must restore confidence in the minds of

the people, the minds of Congress, the minds of the press, that our foreign intelligence apparatus which is indispensable to our security is functioning within acceptable and proper guidelines.

Senator PERCY. Do you agree that the number of people that have access to this oversight and information in the Congress should be reduced if at all possible in the interests of time and not spreading information?

Mr. McCONE. I would treat the subject exactly as the Joint Committee on Atomic Energy has handled its problem.

Senator PERCY. Do you favor a joint committee in this regard?

Mr. McCONE. I favor a joint committee.

Senator PERCY. It may not be possible to set up a joint committee. If the House refuses to, we have no power to set it up. If it is not possible, do you think it might be desirable to try, if we can work it out here, to combine in a Senate committee the authorization and appropriations process, taking into account, now, that we have a Budget Committee to look at the overall effect and impact?

Mr. McCONE. A select Senate committee certainly should concern itself with authorization. I had no trouble during my years in meeting with a small designated committee, subcommittee of the Appropriations Committee, and reviewing our budget in detail, both with the Senate and with the House.

I am not sufficiently familiar with the organic structure, the committee structure of the Senate, to tell you whether it would be practical for an oversight committee to take congressional responsibility of the budget. I am not sufficiently familiar with the authority of the committees to make an intelligent answer to that.

Senator PERCY. Do you feel that the Congress should have the right of veto over intelligence activity?

Mr. McCONE. Yes.

Senator PERCY. Of covert activity?

Mr. McCONE. Yes.

Senator PERCY. Should Congress be informed sufficiently in advance so it can say, do not go ahead and do this, or should it be advised immediately afterwards so as to protect that particular act that is being undertaken?

Mr. McCONE. I think that if a joint committee or a Senate committee were established under ground rules that provided that information imparted to that committee be maintained within the walls of the committee room, then I think it would be possible, as it has been in the past, to discuss covert operations in advance.

Senator PERCY. Does this then make them part and parcel of an operation and make them party to it so that their oversight responsibility might be somewhat diminished?

Mr. McCONE. That is correct.

Here, again, Senator, if what you tell this committee is going to be imparted to other committees and to the newspapers, then this forecloses the whole operation. Without belaboring details, there was one important operation that we undertook—I recall it very well. I sat with Senator Russell and Senator Stennis and discussed the matter two or three times in advance. It was consistent with our concepts of the policy, and they approved it, and it went forward, and it was very successful. Not the situation we face today.

Senator PERCY. Thank you very much.

Chairman RIBICOFF. Senator Nunn?

Senator NUNN. Thank you, Mr. Chairman.

Just a couple of brief questions on that last point.

At that time, there was a consensus about foreign policy in our country, rightly or wrongly. Now we are operating, I think, most would agree without a real consensus.

How do you go about handling covert operations, particularly those that would involve large scale covert operations, when there is no consensus in foreign policy?

Mr. McCONE. I think you gentlemen in the Senate, and those in the executive branch, have to do what was done in the late 1940's and establish a consensus, a consensus of opinion, concerning the policies of this country in the world as we know it today.

As I said, if it is determined that the policies of the past are not to be pursued in the future, then I am quite sure that no intelligence organization will violate the guidelines that are established.

What seems to me to be happening is that many operations that fall within the guidelines that were established and followed by five Presidents, as I say, and both houses of Congress now do not fit the philosophy of our Government, and I think you have to do a little soul searching and make a determination.

We have to make a decision as to whether it is in the interests of this country to attempt to use our political and economic power to in some way frustrate this over-continuing expanse of Communist domination of this world.

I find no change in the purposes of communism. I'm not creating another cold war, or suggesting anything such as this, but read Brezhnev's speech of December 9, 1975. It is a very, very important document and a careful reading will reveal little other than that stated by Khrushchev and by Stalin before him.

Senator NUNN. In your opinion, Mr. McCone, do you believe in the current era that large covert operations or large paramilitary operations are in the best interests of our country? I know that is a broad question and it will vary from case to case.

I am saying at this point in time, say during the next 12 or 18 months, until a consensus is formed, do you think we can consider that any operation of that nature is indeed in the best interests of our Nation?

Mr. McCONE. There has been a great lessening in recent years in the need for either a covert, paramilitary or political action. I think we have to maintain a capability.

I am disturbed about the tragedy and anguish of Angola and the consequences because there we have the opposition making very substantial progress over the control of the country, but that subject has been debated here for the last several weeks and I can add very little to it, except to say that I worry about it.

I know of no other situation now where covert paramilitary operations would be in order, although I have not been to every corner of the globe. There have been very few cases where it has been used. Sometimes I feel it is greatly exaggerated, both in instances of paramilitary and covert political action.

At times it has been very effective in offsetting a determined effort by the Communists to control the minds of and absorb control over the government of a free nation.

Senator NUNN. One final question. Mr. McCone, once this prior notice of covert activities is determined, assuming there is prior notice, to whatever committees are created, do you believe there should be a veto mechanism, either in the committee or in the Congress to prevent a covert activity from taking place when, say, the majority of the committee feels that it should not take place?

Mr. McCONE. I think that it would be proper, yes, if the majority of the committee were opposed or would want to restrict—it is hard for me to believe that the executive branch would proceed, assuming, of course, a reasonable agreement or consensus on what our purposes are.

I think what the difficulty is, Senator—

Senator NUNN. No structure is going to work, no matter what we say on paper, unless it begins to develop a consensus on foreign policy. That is what you are saying.

Mr. McCONE. That is exactly what I am saying.

I do not think that you should attempt to develop that consensus by legislation of oversight of the CIA. I think you have to do what was done in the late 1940's when a group of distinguished Senators and Congressmen from both sides of the aisle, debated, sometimes with great heat, what our purposes should be and reached a consensus. That is what I would like to see done.

Senator NUNN. I agree with that.

Mr. Chairman. I have other questions, but I know that we have another witness. I will yield back my time.

Chairman RUBIOFF. Senator Brock?

Senator BROCK. Thank you, Mr. Chairman.

Mr. McCone, I was going to ask a question, but your last comment, on the right of congressional veto, just raised a concern.

Mr. McCONE. I am having difficulty hearing you.

Senator BROCK. Your last comment on the possibility of a congressional veto bothers me a little bit, because I see the possibility of a very closely divided committee vote. In effect, the Senate in this instance or the House, if they have a separate committee, would be exercising authority over an action of foreign policy. I am not sure we are structured to do that. I am not sure that we are not more constitutionally, at least, limited to the advisory role that was created some 200 years ago.

There are mechanisms by which the committee, if it felt strongly, could take actions through the appropriations process to prohibit a major covert action. I think there is some danger in suggesting that they would have a veto power on each and every action by simple majority vote.

Mr. McCONE. It is a very complicated and difficult matter to treat, because of the absence of consensus. It was not a problem when I was Director, and many times when we often contemplated actions, a respect for the views of the representatives of the Senate or the House committees, never a great issue arose, but dealing specifically with this question has given me some problems.

Senator BROCK. I think that is what would happen in the future. Once the committee is established, not a one-shot investigation, but a

continuing committee with oversight responsibilities, relationships would develop, and understanding the problems that would develop among the members that would comprise that activity, then you create an atmosphere not of distrust, but of trust in working relationships.

I think if this committee felt strongly that the President would very clearly value their advice.

I am reluctant to build in, at the creation of the committee any precise or defined veto authority.

Mr. McCONE. I agree with you, Senator. We are in rather a bad climate right now. We have had a year of investigation.

Senator BROCK. That is right.

Mr. McCONE. We had frightening publicity. We have had a Commission under the Vice President, Senator Church's committee, almost daily headlines and articles and when you analyze it, it all relates to very few things. There has not been a line that I have read in the past year that referred to what 15,000 dedicated people in the CIA have done in the interests of our security.

I think that a committee established in an atmosphere of confidence created between the intelligence community and the committee, that many of the problems that you might try to write into legislation now will really disappear.

I would urge that you handle this matter very broadly and very deliberately until you and the administration have had experience with the relationship.

I can say this knowingly, because for the 4 years that I was there, I had it.

Senator BROCK. I appreciate that very much.

Thank you.

Chairman RUBINOFF. Senator Weicker?

Senator WEICKER. Thank you, Mr. Chairman.

Mr. McCONE, at what point in the proceedings do you feel that the American people should have been notified of Angola?

Mr. McCONE. As I understand Angola, I would have supported the units in Angola reasonably well and with as little publicity as possible for the reason, here you had obviously one group being supported by the Communists and one by ourselves, and the minute that publicity is given to the extent of support, then it merely escalates what the other side is going to do. It seems to me that a thoughtful appraisal by committee and by the executive branch of the Government of a situation as alarming as Angola is, would arrive at an agreed position as to what the best interests of the United States would be.

I do not see that it has to be flashed in the headlines of every newspaper, as it has been.

Here again, I go back to the question of consensus. We are the tallest pillar of freedom in the free world. We are going to exercise our economic and political and moral influence to help those who are struggling for their freedom against the intrusion of communism.

Are we going to do that, or are we not going to do that? That is the basic issue, as I see it.

Senator WEICKER. Consensus in the sense that you referred to before when you were the head of the CIA, sitting down with Senator Russell and Senator Stennis and arriving at some policy?

Mr. McCONE. Under the atmosphere that existed when I was working closely with Senator Stennis and Senator Russell and Senator Vincent and others on the other side, we would have no problem, because there was an understanding of what our purposes were on the basis of the agreements that were reached in the 1940's on what we were going to do, agreements that brought about the range of actions from the establishment of NATO and the North Atlantic Council and the Berlin airlift, and countless other things.

Whether in today's climate and lack of consensus, the same kind of an understanding could be reached, I really do not know. I think it is very unfortunate that there seems to be a departure from the position traditionally taken.

Senator WEICKER. I do not think it is unfortunate. I think you handled your job with great distinction and worked with the country at that time that acted in a particular way, but unfortunately in today's world—and I think it is going to be so forever—consensus is not yourself and Senator Stennis and Senator Russell. If, indeed, there is money to be paid for our efforts in Angola, it is going to be paid by more than the three of you. It is going to be paid by Americans all over this country.

If there are lives to be paid—and that could well be the case once the involvement takes place, it will be paid by many Americans. That is what is of concern to the country. The American people want to know about decisions that affect money and lives.

I think it is very important to understand that in this day and age, as a matter of general policy, such as Angola, it is not a question of the least publicity, it is very definitely a matter for the American people to decide as to whether or not they want to invest their money and their lives in that situation.

We might disagree as to whether that should be done, but certainly they have the right to express themselves.

Do you feel as a matter of general policy, not specific, but general policy, the American people should have had a right to determine whether or not they wanted to actively get involved in the overthrow of the Government of Chile, in a general sense?

Do you think that is something that they have a right to pass upon, or is that something, again, that should be done vis-a-vis a few people here in Washington, both in the legislative and executive branches?

Mr. McCONE. I do not think it is appropriate to engage in any effort to overthrow the Government of Chile, once it was established. I think a mistake was made.

Before that Government was established, and before a minority established Communist control in Chile, we did not take such action, and it was inappropriate to convince the two factions of the democratic party that they were committing a suicide by their division, and urge them to settle their differences and put up a single candidate. If they had done that, 60 percent of the voters would have voted for them.

Senator WEICKER. You would have had a positive effort on our part?

Mr. McCONE. A mistake was made in 1970. It was that no positive action was taken to convince, prior to the election, that the competing Christian Democrats, if they got together, would insure the continuation of the democratic government in Chile.

Senator WEICKER. If I could just interrupt there—because I think we have a parallel right now. I would like your comments on it.

If Italy goes Communist, would you agree with me that that would not be a matter of a sudden overthrow, but something that has been brewing for a very long period of time?

Mr. McCONE. I agree with you. There has been a continuing increase of the Communist vote in Italy.

Senator WEICKER. A gradual process, not an overthrow.

Mr. McCONE. Gradual.

Senator WEICKER. Just through the democratic process going Communist?

Mr. McCONE. That alarms me.

Senator WEICKER. Do you not think we should be doing something positive rather than paying money to the Italian politicians? Is there not a positive approach we could take?

Mr. McCONE. Over the years we have done various things in Italy to help strengthen the parties that stood reasonably closely to the principles of this country. I remember back as far as 1948 when there was an election, President Truman ordered Secretary of Defense James Forrestal to do everything possible to demonstrate the importance of the relationship between the United States and the Italian Government, even going so far as to put American tanks which were left over from World War II and stored in various places on the streets of Naples, Milan, and so forth.

Since that day, various things have been done, including the support of political parties where there was a need to do so.

Senator WEICKER. I appreciate the President putting tanks in and the payment to Italian politicians, but I suggest possibly the fault lay in the fact that probably for 96 percent of the Italian people, you cannot eat a tank and you cannot eat a bribe, and you cannot educate with a tank and you cannot educate with a bribe. That is what 96 percent of them have. And if we want to do something positive, that is where our efforts ought to be.

That is one of the difficulties.

What I am suggesting here today, this is another time and another challenge, and clearly if we are going to succeed in this effort, it requires the participation of all of the American people, all of the American people. Otherwise we have lost.

Chairman RIBICOFF. Thank you very much for your valuable testimony, Mr. McCONE. We are most appreciative.

Mr. Clark Clifford.

We welcome you here, Mr. Clifford. I consider you a most important witness. I have read your statement very carefully. It is brief, cogent and specific; it shows a lot of experience and commonsense qualities we would always expect of you.

Mr. Clifford has served as Secretary of Defense and on the President's Foreign Intelligence Advisory Board. He also happened to be Special Counsel to President Truman between 1946 and 1950 during which time he helped draft the 1947 act which established the CIA.

Mr. Clifford, I have another engagement that I must keep. I have asked Senator Nunn to chair the remainder of the hearing. I have also given Senator Nunn some questions from me that I would

like to have him ask you after he and Senator Weicker have questioned you. I do want to apologize for having to leave now, but I have read your statement very carefully and I want you to know that I am very much impressed with it.

Mr. CLIFFORD. Thank you very much.

Chairman RIBICOFF. Senator Nunn, will you please chair?

Senator NUNN [presiding]. Why do you not proceed, Mr. Clifford?

**TESTIMONY OF CLARK M. CLIFFORD, FORMER SECRETARY OF
DEFENSE**

Mr. CLIFFORD. Thank you, Mr. Chairman.

Mr. Chairman, at this stage of a committee's inquiry, I believe that the primary responsibility of a witness is to be brief.

Almost as important is his obligation to refrain from going over the same ground as previous witnesses, and to abstain from repeating those thoughts which have now become elementary and generally accepted.

I base my remarks upon certain premises. The operations of our intelligence agencies have gotten out of hand. In many instances, these actions have been unproductive, undemocratic and un-American.

The knowledge regarding such operations has become so widespread that our country has been accused of being responsible for practically every internal difficulty that has occurred in every country in the world. Our reputation has been damaged and our capacity for ethical and moral world leadership has been grossly impaired.

We have operated under the present act for 28 years. It has served our country reasonably well, but its defects have become increasingly apparent and it needs amending very badly.

I will confine my formal remarks to the presentation of three recommendations which I believe are necessary to get our intelligence operations back on the correct road.

One, the creation of an effective joint House-Senate committee to oversee intelligence operations.

Two, a new position of Director General of Intelligence should be created.

Three, with reference to covert activities, the oversight committee must be informed in advance before a covert project is launched.

JOINT HOUSE-SENATE COMMITTEE

An integral part of our constitutional form of Government is the system of checks and balances that exists between co-equal branches of Government.

As part of this relationship, I suggest that the Congress has the duty to oversee our Nation's intelligence operations. The task is not being performed adequately at this time because of the indisposition of the Congress to assert itself in this field.

In addition, the antiquated and unwieldy involvement of six congressional committees which are concerned with intelligence creates additional problems.

Traditionally, there is an unwillingness on the part of the executive branch to cooperate with the Congress in a field in which so much

secrecy abounds. However, this is not the primary reason why the oversight function has been neglected.

The startling fact is that since the National Security Act of 1947, the Congress has time and time again affirmatively refused to meet its responsibilities in this area.

Since 1947 some 200 bills have been introduced in the Congress in pursuit of the goal to provide meaningful oversight of the intelligence community; 150 of these bills have specifically dealt with strengthening congressional oversight—147 of these bills provided for the establishing of a Joint Committee on Intelligence modeled, to some extent, after the Joint Committee on Atomic Energy. Out of these 147 proposals only two bills ever reached the floor where they were promptly and soundly defeated.

However, the traumatic effect of the disclosures of the past 2 years has been so pronounced, both upon our people here at home and our standing abroad, that one can hope, at this time, that the Congress will respond to its clear responsibility and give our country the kind of legislation which is required to prevent the mistakes, the excesses, and the tragedies which have occurred in the past.

I would hope that the Congress could agree upon the creation of a joint committee of the House and Senate because of the need for confidentiality and the maintenance of security. One committee engaged in the oversight function is preferable to two separate committees.

The joint oversight committee in the atomic energy field has worked well and a single committee can perform just as satisfactorily in this even more important area. I would hope that such a joint committee would be limited in size.

Five members of each Chamber could perform admirably. I would not make it larger than seven from each House.

Persons who became members of such a committee would agree in advance to recognize the importance of the assignment and give it the time required. A rotation of the members, in a moderate form, would be desirable.

The maintenance of the high degree of security required of such a committee and the control of its staff could well be left to the members of the committee who will recognize the problem just as clearly as do the other Members of the Congress.

NEW POSITION OF DIRECTOR GENERAL OF INTELLIGENCE

In 1946 President Truman ordered that a study be conducted which ultimately led to the creation of the Central Intelligence Agency as part of the National Security Act of 1947.

In that act, the Director of Central Intelligence was given the task of operating the Central Intelligence Agency and was also given the responsibility, as chief intelligence officer, for the overall coordination of the Nation's intelligence operations. This plan has not worked.

There are now nine separate intelligence agencies in our country. They are the CIA, DIA, NSA, FBI, ERDA, State Intelligence, G-2 of the Army, Office of Naval Intelligence, and Air Force NRO.

It has turned out that the Director of Central Intelligence is merely one individual among a number of equals. The correlation and syn-

chronization of the activities of these various agencies within the intelligence community has not been effectively performed.

I recommend that the Congress create a new position which could be called Director General of Intelligence. The Director General would be responsible for the end product produced by the intelligence community and he would be the chief adviser to the President on intelligence matters.

The Director General would also be charged with the duty of seeing that the various agencies operated effectively and complied with the law.

In this connection, he would have under him a number of inspectors who would assist him in carrying out this function. Under this concept, there would still be the Director of the CIA but his duties would be confined to the day to day operations of that agency.

The Director General would report directly to the President and to the National Security Council. Also, this individual would be the main contact with the new oversight committee.

It would greatly facilitate the activities of the committee if they could turn to one individual in the executive branch of Government upon whom they could place the responsibility of keeping them fully informed regarding activities of the intelligence community and who would be in position to assure the committee that such operations were being conducted in compliance with the law.

I suggest that the creation of such a position would be a valuable forward step in centralizing the control of our intelligence functions, in improving the product and in advancing meaningful liaison with the Congress.

ADVANCE NOTICE TO OVERSIGHT COMMITTEE OF COVERT ACTIVITIES

It is my experience that it is necessary for our country, from time to time, to engage in covert activities outside the United States. Such activities in the past have been exceedingly important and it would be unwise to deprive our country of this valuable weapon when we must look forward to an uneasy and possibly dangerous future.

However, I believe that the present system is no longer adequate to meet the task. The lack of proper control has resulted in a free-wheeling course of conduct on the part of persons within the intelligence community that has led to spectacular failures and much unfortunate publicity. A new approach is clearly needed, for we must not continue to commit the egregious errors that have caused such consternation to our friends and such delight to our enemies.

The degree of activity on the part of the intelligence community in the covert field has been surprisingly high. I would guess that in some years possibly hundreds of covert actions have been launched and, as a further guess, I would say that possibly as many as 1,000 such projects may have been approved by the 40 Committee and its predecessors in the last 15 years.

I believe this is much too high and is dangerous. I feel strongly that the controls on covert activities have been deficient and, in some instances, totally lacking. I am convinced that the country cannot depend upon proper control to be exerted solely within the executive branch.

In this regard, the new oversight committee can perform one of its most important functions.

I would suggest that the new law should provide that the oversight committee of the Congress must be informed in advance by the executive branch before any covert project is launched. The committee should be briefed by the Director General of Intelligence, and, if it approves the project, then it can be undertaken at once.

However, if the committee disapproves, it should inform the Director General of its disapproval so that he can report that fact to the President and the President will have the benefit of the Joint Committee's reaction. On some occasions the President may choose to confer with the oversight committee, after which the President may decide to abandon the project or possibly modify it.

If, after such a colloquy, the President is determined to proceed on the project, then he may have the constitutional power to make that decision. Also, under the Constitution, the Congress could decide, on the recommendation of the Joint Committee, to withhold funds necessary to finance the activity in question.

It is my feeling that the importance of the decisionmaking process in this very delicate field is such that it should involve joint action by the executive and legislative branches. I feel quite sure that one major result would be to cause the executive branch to consider with greater care the undertaking of any covert activity. This is a consummation devoutly to be wished.

When the obligation exists upon the executive branch to submit a covert plan to the oversight committee, I believe that it will be much more carefully considered and more adequately prepared.

I was intrigued by the testimony of Mr. David Phillips, head of the Retired Intelligence Officers Organization, that the majority of his members think such a plan would be advisable. Mr. Phillips stated that 3 percent of his members believe that Congress should be better briefed in advance and have veto power over covert operations, 39 percent thought the Congress should be advised after the fact. Then Mr. Phillips said:

A majority of 56 percent want Congress to be advised in advance and to have the opportunity to comment before the fact on the advisability of covert operations.

I suggest that the reason for this attitude is that there would be a division of responsibility which would be healthy and the intelligence community could rapidly improve its present image and work toward regaining the respect that it formerly had. The fundamental test in determining the propriety of a covert action is whether it may helpfully influence a situation that affects the national security of our Nation.

It seems clear that in the last 2 years, as the result of widespread publicity and disclosures regarding our intelligence activities, our country has sustained some reduction in the effectiveness of its intelligence effort.

If the Congress, however, will act responsibly in correcting the conditions that have existed, then I consider this setback to be temporary in nature.

Our country has paid a price for the agony we have undergone but I do not consider it excessive if we will take the necessary steps to protect our democratic form of government, the rights of our people and the restoration of our proper image in the world.

Thank you.

Senator NUNN. Thank you, Mr. Clifford, I have several questions here that Senator Ribicoff wanted to ask. I will ask them in his behalf.

The New York Times reported this morning an alleged conclusion by the House Intelligence Committee that the Federal intelligence agencies are beyond the scrutiny of Congress.

Do you agree?

Mr. CLIFFORD. I disagree entirely. It seems to me that the system of checks and balances that is contained in our Constitution authorizes the Congress to assume a supervisory role in this field and that the Congress is avoiding its responsibility if it does not perform that function. Thus, I completely disagree with that statement in the Times.

Senator NUNN. You think it is Congress' duty and responsibility? You also believe it is feasible and possible for Congress to perform that role?

Mr. CLIFFORD. I think it is.

I might say parenthetically that great emphasis has been given to the constitutional powers of the President in the field of foreign policy. If you were to ask somebody where in the Constitution those powers are expressly delegated to the President, I would suggest to you that he would be unable to find them. These powers are derived from Supreme Court interpretations of the Constitution. Certainly at no place in the Constitution do I find the suggestion that the President alone has the right to conduct intelligence activities, either covert or overt.

I think that a proper reading of the Constitution would indicate that intelligence activities are the joint responsibility of the executive and legislative branches.

Senator NUNN. Thank you, sir.

The New York Times also said, I believe, this morning that the House committee has concluded that over the years the annual size of the intelligence budget has been three to four times higher than reported to the Congress. This report apparently relies, in part, on the GAO study concluding that the budget reported to Congress omitted portions of the Pentagon, National Security Agency, and the Pentagon's advanced projects in the research administration.

Do you have any comment on this article?

Mr. CLIFFORD. Yes, sir.

I would not be at liberty to give an opinion as to the actual cost of our intelligence operations. Those figures were always secret when I saw them.

Senator NUNN. I am not asking that question.

Mr. CLIFFORD. Insofar as the manner in which the intelligence appropriations have been made, many of them have been buried in other departmental budgets. That is the way it has worked for years.

The CIA does not just have one clear budget. It derives funds from appropriations that are made in other departmental budgets.

I would hope that that situation might be improved and clarified by new legislation of this Congress.

Senator NUNN. Would you give a joint committee, Mr. Clifford, the supervision over the budgets of the intelligence agencies in addition to the supervision of the substantive matters?

Mr. CLIFFORD. Yes, I would.

If this committee is going to work properly, it should be a committee that would have such oversight, authority, and control as the full Congress itself would have over an operation. My ideal committee would be composed of five men from each Chamber, and would have full control over our intelligence activities.

They would have budgetary control and would be fully informed of the operations of our intelligence community.

Contrary to what I have heard before, I would include under the supervision and jurisdiction of the oversight committee that phase of the FBI's operations that involve intelligence work. The committee's jurisdiction should not be limited to three-fourths of our intelligence activities.

Senator NUNN. You are saying the FBI counterintelligence activities, but not the FBI domestic law enforcement ones?

Mr. CLIFFORD. I am not including any domestic enforcement activity. I do not know what percentage of the FBI's activities involve counterintelligence. It might be 10 percent. I would certainly include that activity under the jurisdiction of the oversight committee.

One problem that you have—and it is your problem and not the public's—is to compel other congressional committees to give up certain powers that they have in order that the oversight committee may operate appropriately and effectively.

That is a real problem. I think the people are likely to be watching, as Senator Weicker says, to see whether Congress is going to resolve this problem, or whether it is going to attempt to maintain certain outmoded, obsolescent, and archaic attitudes that to a great extent have gotten us to where we are today in this field.

Senator NUNN. Another question, Mr. Clifford, on behalf of Senator Ribicoff.

On balance, do you think that covert operations unrelated to the gathering of intelligence that the Nation has conducted over the last 10 years has helped or hurt this country?

Mr. CLIFFORD. On balance, I think they have hurt us. This is due to the manner in which they sometimes have been conducted and the fact that they generally have not been controlled well.

There have been some covert successes. We do not hear about them, and we obviously cannot talk about them. We have heard a great deal about the number of failures in intelligence work that we have had, and to the extent they occur, they are, in my opinion, often the result of an attitude that exists in the intelligence community that was not foreseen in 1947 when we were writing this act.

There are persons in the intelligence community who believe that the CIA understands the problems facing the United States better than perhaps the ordinary citizen or even other members of the Government. As a result, these people proceed to attempt to mold conditions in other countries to suit them. This is a very heady wine and

gives one the feeling of controlling the destiny of other people. It has not been watched carefully.

In my opinion, one of the great violations committed in the intelligence field has been the fact that it is not always confined to problems involving the national security of the United States. If I might offer a comment parenthetically, I should indicate that I do not believe that our activities in Chile were justified, because I do not believe that the national security of the United States is involved in Chile. I would go further and say that I do not believe that the activities that we engaged in, in Angola, were justified.

I have the greatest respect for Mr. McCone's opinion; I happen to differ with him on that point. I do not believe that our national security is involved in Angola. I would not have gone into Angola.

Senator NUNN. What about Portugal and Italy?

Mr. CLIFFORD. You have a different situation there. There, NATO is involved. Perhaps it would be advisable for this committee to decide where are our areas of national security in the world.

Senator NUNN. If that becomes known publicly, you have sort of the situation that you had before the Korean war, do you not? If you are going to have a line and you exclude certain areas in advance, it seems to me you ought to get into areas of danger.

Mr. CLIFFORD. I am not suggesting that. When you talk about the Korean war, you are referring to the public speech that Secretary Acheson made at the Press Club when he drew a line around areas that involved our national interests and did not include Korea. That is not the kind of discussion I had in mind.

What I am talking about is the need to consider carefully the areas of the world where our national security is involved.

We know already, for instance, speaking perhaps from the standpoint of the very simplest approach, that Canada and Mexico are important to us and the Caribbean is important to us. We know Europe is important to us because we have gotten into two World Wars as a result of conflicts there.

I think we have to recognize that the Middle East is important to us. I know that Japan is important to us. There will be other areas that will be of marginal importance. I am suggesting that there has not really been any definite delineation of where our national security is involved, and thus in almost any country when a crisis situation arose—maybe the Soviets were involved, maybe the Chinese were involved—the presence of that foreign power forced us to get involved. I think that is a very poor test.

Senator NUNN. You are really saying what we were talking about a few minutes ago in another way, are you not, that we need to develop some kind of consensus about what is our national security and what is in the interests of our foreign policy?

Mr. CLIFFORD. I would hope that would come. I do not know when it is going to come. I would hope that it would come in my lifetime.

We are at a curious watershed of history now. After the Second World War, we entered into a period where there was a broad consensus as to our foreign interests. This period lasted 15 or 20 years, but we are leaving all that now. There are a number of reasons that we no longer support this consensus, the major one being Vietnam.

Vietnam was the ultimate culmination of an erroneous foreign policy that was built upon basic premises that were right at one time but were carried on for too long. As a result, people lost their confidence in the ability of governmental officials to make the right decision because the people knew, long before officials did, that our policies in Vietnam were wrong.

Senator NUNN. The people?

Mr. CLIFFORD. The people of the United States knew that our foreign policy was wrong. It took others a while to catch up with the way the people were thinking.

I do not know when this consensus of opinion is going to come. I hear people talk about what our foreign policy should be today. I am almost in complete disagreement with what they think our foreign policy should be.

Many people think that whenever the Soviet Union shows its presence today, we should hurry and oppose the Soviet Union. I think that is a very poor policy for our country.

Senator NUNN. I certainly think you have made some tremendous observations here. I think that this kind of discussion and debate ought to take place.

Carrying that a step further—and this is leaving Senator Ribicoff's questions and going to my own—do you think, instead of using covert activities and aid and so forth, it is legitimate for the Soviet Union to be transporting Cuban troops in a country like Angola? Do you think that would be beyond what you identify as our national security interests? Do you think, in terms of direct assistance, that we should take countermeasures with discussions with the Soviet Union on larger measures and economic countermeasures such as embargoes on certain types of exports?

Mr. CLIFFORD. Yes.

Senator NUNN. Do you think that is the proper realm, rather than getting involved in a military way?

Mr. CLIFFORD. Certainly I do. When the Soviet Union takes action in some part of the world and we think that is inimical to our position, I think we ought to talk to the Soviet Union about it. In those areas in which we have leverage, we might indicate that we have leverage.

I think that is perfectly proper.

But when we come to Angola as a specific instance, I would not go into Angola with \$90 million, or however much is being requested. I would not become identified with helping one side in Angola that is also being helped by South Africa.

I would not get myself in that position.

Senator NUNN. You would discuss it in economic terms?

Mr. CLIFFORD. I certainly would.

Senator NUNN. Another question of Senator Ribicoff's.

You said, Mr. Clifford, in 1975 that some CIA officials "seemed to believe that the Agency was above normal law."

The first question, what do you mean by that? Second, how do you think the creation of a new committee can help eliminate this problem?

Mr. CLIFFORD. This is a complex matter, but I will try to keep my answer short. This is one of the basic difficulties that confronts our country and the intelligence supervisors on this committee.

Let me try to explain it this way: A few days after the Bay of Pigs, President Kennedy called and asked me to come over to the White House. I went over, and he said that he had just suffered a complete disaster in Cuba. He said that he had made the wrong decision because it was based on the wrong advice, and the wrong advice was based on the wrong facts, and the wrong facts were based upon the wrong intelligence.

President Kennedy had a solution to this problem clearly worked out in his mind. He said that he was going to create a nine-man President's Foreign Intelligence Advisory Board to examine the whole field of foreign intelligence and ascertain how this egregious mistake could have occurred. The point is that the intelligence system did not work properly.

Coupled with this apparent breakdown in the system is an attitude that exists down deep within the organization of the CIA and other intelligence agencies.

I wondered for a long time, after serving on the Foreign Intelligence Advisory Board for 9 years, why from time to time we did not receive information that we learned later had been obtained.

I think it is due to this. There are a number of persons who have been trained in this field for 15 or 20 years. They know the field so well, and it is so complicated and so sensitive and delicate, that they believe that there is a higher duty that they have than to report intelligence to their superiors. They seem to believe they have a duty to follow their own judgment in making decisions because the people above them do not have sufficient experience to make wise decisions.

I think that the group which is excluded from receipt of certain intelligence includes the Director of the CIA. I think it includes the President of the United States. I think it includes the Congress of the United States.

This attitude has to be watched with great care so that important decisions are not being made by lower staff people.

Sometimes situations arise where the military feels that they should make basic decisions since they know a lot more than the civilian head of the Defense Department. Well, you have to have quite a little controversy sometimes about that. The problem then is not confined just to intelligence work but because of the innate secrecy that surrounds this area, it occurs more frequently there.

I might say that I think that this is another reason why the new position of Director-General of Intelligence would be exceedingly valuable to our country. He does not always have to support the CIA and to sustain the CIA and to answer possibly for its transgressions. The man who works as Director of Central Intelligence with the day-to-day task of running the Agency can perform that function.

The new Director-General can look from the top down on the whole operation, and synchronize it. He can see where mistakes have been made, and will not be torn by the loyalties so many individuals have to their own organization.

One concluding comment in that regard. The President's Foreign Intelligence Advisory Board for 2 years spent a lot of time in adjusting jurisdictional disputes that were going on within the intelligence community. From time to time I had a feeling that a flyball was hit

out to left center field and the chief fielders would go, and they would stop in time and the ball would fall to the ground. The next time they would both go for it and they would hit each other and the ball would still fall to the ground. There was no real coordination.

Mr. McCone and others made the effort to resolve these problems, but they did not have the power in the law. We had a number of disputes, you remember, between the CIA and the National Reconnaissance Organization that flies our satellites and that are so important to us. I am happy the Board resolved those.

The Director-General, with the President's power right behind him can solve a lot of these problems within the executive branch of Government. In addition, the oversight committee will only have to deal with one man instead of nine different organizations.

Senator NUNN. Thank you.

One question on that: Because of this decision we will make on this overall intelligence matter will be the confirmation or the failure to confirm George Bush. What type of individual do you think ought to fill this new post of intelligence chief, or Director-General of intelligence?

Would political background be a debilitating factor? Would you want someone who came up within the intelligence community or would you want someone without the intelligence community background?

Mr. CLIFFORD. I do not have any ideal image of the man at this time. I would hope that he would be a man who had maturity, a man who had the confidence of the country.

It should be a man who had served in Government before, hopefully in departments where he might have come in contact with intelligence work, so at least he had some background in the field. He could, of course, learn it. It would take a while to learn the field, and Mr. Bush will take quite a little while to learn what is going on in the intelligence community.

I do not find it an improper appointment. I hope he will learn quickly, and I think that is the hope of all Americans.

Senator NUNN. You would not say, then, in principle that political background should disqualify a person from this office?

Mr. CLIFFORD. No.

That is a curious business. Politics is sometimes looked upon as though it constituted an area of opprobrium. I do not have that feeling at all. I think if the man is experienced in politics it shows that he has felt an urge toward public service. I think it helps him understand our Government better to have some political experience.

Senator NUNN. Thank you, Mr. Clifford. I think your statement and your answers have made a great contribution.

Senator PERCY. Senator Lowell Weicker was so thoughtful to me this morning, I would be happy to yield my 10 minutes to him at this time.

Senator WEICKER. Thank you very much. I will try to be brief.

Just to follow through on a question asked by Senator Nunn, I think there is a difficulty in trying to make our evaluations of a man, in this particular case, George Bush. I have nothing but the highest regard for him, but the fact is that at this time in our history the

American people are a little weary of politics as it is applied to justice, law enforcement and intelligence.

Frankly, I find it almost ludicrous that we sit here and discuss reform in the sense of acts passed by the Congress. We put the bee on the various agencies to clean up their act, yet the first crack out of the box, we turn to a former chairman of one of our major political parties to head up one of these agencies. I think that is where the difficulty arises, not as it tends to the man. I agree with Senator Percy's suggestion that perhaps we should seek an attorney general from outside the partisan area. I love politics. It is my life. I do not mean to criticize it in any way. However, I think the American people are looking for something extraordinary now in those who are in charge of our law enforcement system.

I do propose that those closely identified with partisan politics—which definitely has its place, are not the best talent to pool for our law enforcement agencies.

Now, Mr. Clifford, it has been well-documented by Senator Ervin's Constitutional Rights Subcommittee that during the latter years of the Johnson administration, military personnel were used to infiltrate and spy on student activists or other political organizations opposed to the Vietnam war. Some of this activity occurred during your tenure as Secretary of Defense.

My first question is, were you aware of it?

Mr. CLIFFORD. No; I was not.

Senator WEICKER. If you were not aware of it, as Secretary of Defense, how is any congressional committee going to gain knowledge of this type of activity in the oversight sense?

Mr. CLIFFORD. There has been an enormous amount of publicity directed to this problem. I did not know the problem existed because I was not looking for it at the time. If I had been looking for it, I suppose I would have found it.

Apparently, as we later learned, this activity had gone on for many, many years under a number of Secretaries. After I left, it went on for a great many more years.

This is, again, a problem that is related to the subject that I referred to earlier. That is, in many areas of the Government, there are career persons who have gained great experience in their field and believe that they really have the basic right to make the critical decisions. Secretaries come and go, and Presidents come and go, but these career people remain.

Senator WEICKER. I think you have made a good point.

In other words, if, indeed, an effective job is going to be done in the area of oversight, it has to be a primary, not a secondary, function of a congressional committee.

In other words, at the present time the failures on the part of the Congress have been that the FBI oversight is the secondary job of Judiciary; CIA oversight is the secondary job of Defense. Therefore, the job either has not been done or has been done very poorly by the Congress.

I gather from what you are saying, that in your own experience and I can understand that you were not looking for this particular activity; your duties encompassed a good deal broader area of activity and judgment, and would you support, then, the proposition that this is

one of the reasons why you have to have a special committee of oversight, because it is important enough to direct full attention to it?

Mr. CLIFFORD. Yes.

If I might add another reason for those you have given, I would suggest that the kind of oversight that we have had in the past has been ineffectual. Part of the reason for this failure is due to the fact that for years and years the CIA dealt with a very few selected individuals on the Hill. The relationship between these persons became very close and the individuals on the Hill chose to accept the judgment of the CIA. I have heard on occasion that perhaps in some instances, the Hill chose not to know what the CIA was doing.

Those days are gone forever, after the catharsis through which we have gone and the examination of this whole area.

So I would hope that this new committee would understand, as you suggest, that its primary responsibility is to change what has gone on in the past and make it their business to find out what is going on in the future.

I might suggest that maybe part of the reason that they have not wanted to do that in the past is, like all human institutions, sometimes there is a desire to shirk responsibility and not be held accountable. Congress will now have to be held accountable in the future.

Senator WEICKER. In other words, I gather from your comments that you would also agree with a rotating membership on this committee?

Mr. CLIFFORD. Yes.

Senator WEICKER. In order that we do not get into that sweetheart relationship that has existed in the past.

Mr. CLIFFORD. There should be a form of rotation. I disagree with the suggestion that certain named individuals that are chairman of other committees should constitute the oversight committee. I think that is a very poor suggestion.

Men who are head of the most important committees in the Congress have very busy jobs, and a part of the whole trouble that we have here is that the oversight function has been considered of secondary importance.

I would hope that if we had five men from each Chamber that those men would be selected because they are willing to give it the time necessary and are willing to understand the importance of maintaining security.

I think it is unwise to pass a great many laws in an attempt to legislate security. You know among lawyers there is a principle that "hard cases make bad law." Here, we might say that emotional periods make for bad legislation.

I think here, if we attempt to try to define every limit and every responsibility, we are going to make a serious mistake. So I would suggest that general guidelines be laid down.

It is the nature of the men who would serve who would determine the success of the effort.

Senator NUNN. If the Senator would yield for a moment on that, we could also give that particular committee, whether it is a joint committee or not, a mandate to come back a year from now in, hopefully, a quiet time when there is less emotion on this subject and report back any further legislative recommendations.

Mr. CLIFFORD. As long as that was very secondary and there was no doubt in any mind that this was a permanent, powerful, responsible, oversight committee. We want to be very careful that nobody gets the impression that it is a temporary investigating committee.

Senator NUNN. Maybe Senator Weicker could ask this question. It seems to me that there may be a conflict between the desire to make this committee the primary responsibility of the Senators or Congressmen who serve on it and a further requirement that the committee rotate. Most people in the system that we are under feel that they have to participate in a primary committee and that they are going to remain on it. That means at one point in their career, they may often be chairman.

We have to consider that very carefully.

Maybe the Senator would like to comment on that?

Senator WEICKER. In the technical sense, that problem can be addressed, as long as it is understood that the man does not lose his seniority when he goes off. When he comes back, he goes back to his former slot.

I agree with you. The thing that is so hard to make understandable to the American people are the spiritual values of this Nation that are very much wrapped up in this controversy. It is not like serving on the Agriculture Committee, which is important too, or serving on urban problems, which is just as important to my State. That is the bread and butter, that is the stuff we are supposed to deliver to our constituents.

It is more difficult to translate to the tangible the matters we are discussing right now, but the very survival of this country depends on it.

I agree it poses a political problem, but I do not think this should be secondary in terms of the effort, it has to be primary. Experience has taught us that, all of us. On the other hand, I think that can be done, if it is for a period of time, then the person does not lose seniority on the committee.

Senator NUNN. We really have to think that one out.

Senator WEICKER. I do not have to think it out too far. During all of that business of Watergate and that mess, a lot of people would stand up there and try to deride those measures and say, why are you not tending to this business, that business, in the State of Connecticut. The Congress was; I was. We were tending to day-to-day problems.

I think that people have a great appreciation--let me put it this way, more so than anything else, it is the state of our spirit that determines the state of our Union. By gosh, let no one think that they can divide the two, the tangible and the spiritual in this country. We are a very small country, small population, small national resources, small land area. It is none of that that gives us the No. 1 status in the world. It is the spirit that drives this handful of people to heights and to achievements unknown to anyone else. Destroy that spirit, and we are dead as a nation.

Mr. CLIFFORD. Very briefly, in assessing the importance of this whole field, in this committee, we must keep in mind the enormous impact that the operation of intelligence has on our foreign policy. People will all agree that foreign policy is one of the most important matters we

have. We have had substantial setbacks in our foreign policy this last 3 or 4 years through what I consider to be the errors that have occurred in our intelligence community.

That, I would hope, could be eliminated. Then, intelligence work would be of great support to our foreign policy.

The revelation of our activities in Chile has damaged us, not only in Chile, but all through Central and South America.

This kind of exposure, I think, is very damaging.

Senator WEICKER. My last question, Mr. Chairman.

At the tail end of your statement—it is very well put, Mr. Chairman—you say, if the Congress, however, will act responsively in correcting conditions that exist, then I consider this setback to be temporary in nature. Our country has paid a price for the agony we have undergone, but I do not think it is excessive if we will take the necessary steps to protect our democratic form of Government, the rights of our people and the restoration of our power in the world.

I concur with that statement entirely. I would just like to put this before you.

We are both lawyers. I think we understand the two phrases “de jure” and “de facto.”

I suggest to you, and I would like your comments, if the Congress does not act on the basis of the facts that are now known, then it is altogether possible that de facto we have approved the abuses of the past. In other words, by our failure to act with the facts in hand—not speculation, but the facts in hand—if we do not act responsibly, as you have stated, then, de facto, they become a part of our governmental structure in this area.

Mr. CLIFFORD. It would seem to me to be impossible to come to any other conclusion. We have had 2 years of one exposure after another of what I consider to be misconduct and gross misconduct in our intelligence community.

If we do nothing about it, I think it places the mantle of approval on what has happened.

I was alarmed when I heard one member of this body suggest that this area ought to be left just the way it was before. It was suggested that we do not need any new law; that the six or eight committees that oversaw the events of the past should continue to be given that responsibility.

I felt that was perhaps an unfortunate position. If we are not going to learn by reason of the past, then we are going to continue to make serious mistakes in the future.

Senator WEICKER. Thank you, Mr. Clifford.

Thank you, Senator Percy, for your courtesy. I appreciate it.

Senator PERCY. First I would like to say, Secretary Clifford, that when you are back in private life and testifying before a congressional committee, the time we keep you waiting is expensive for you and your partners and your clients. We deeply appreciate your patience.

Second, the value of your testimony is that without all those staffs anymore, it is generally short. It is yours. You have to write it yourself. You generally always come up with creative ideas.

For that reason, you are called on so many times. We are really most grateful for your willingness to continue to counsel and advise with

us. You have made the imaginative suggestion for a Director-General for intelligence, to see that someone is really in charge and pulls this all together. How about a staff for that person, would that person be able to carry on without a staff or an agency behind him?

How much do you envision would be required in order to effectively control this?

I ask this question feeling that corporations, many huge corporations, have corporate headquarters that are relatively small, but they control a vast, worldwide network. It is possible.

What do you envision for this?

Mr. CLIFFORD. Yes, sir.

I think that a carefully selected staff can serve the Director-General of Intelligence. I would not arbitrarily place a limit on it. The Director-General might want 50 men or he might want a 100 men around him.

Mr. McCone made a suggestion that has been discussed that the Director-General of Intelligence have two deputies. One of his deputies could possibly be the Director of Central Intelligence, which would make him very close to the Director-General. The other deputy could be the one that is overseeing the rest of the intelligence community. That is what Mr. McCone suggested.

I think that if I had my preferences in this regard, I would separate the Director-General of Intelligence a little more from the intelligence community. I would establish an office for him in the District of Columbia, fairly near the White House. I would hope that he would have almost daily contact with the White House. His staff should be in daily contact with the CIA. He might want to place a man in each of these agencies who would act as his contact man. He would get all of this synchronized, digested, intelligence each day. He would get the intelligence evaluations.

He can be kept fully informed, and it is his responsibility to see that the job is done well.

I have a friend who says he has been in every national park in the United States and he never saw a statue to a committee. I think that the significance of that remark is that if you name one man to an important job and give him the authority and responsibility, we have learned in this country that that is how to get the job done.

Senator PERCY. We are getting right down to the crux of why I came on this committee many years ago. I was so concerned that we fudged up organizational charts in the Government. We had an Assistant Secretary of State for economic and business policy up for confirmation this morning, and he could not tell me to whom he reported.

In the State Department, in the organization chart, there is an Under Secretary, you would think the Assistant Secretary would report to him. No. He is off in a box on the side. He is sort of a coordinator. And I have been trying to root out all of the coordinators, because it is a direct line responsibility.

Now, I think the job you mention should be created. I am trying to find how it should operate. A large part of our intelligence community is in the Defense Department. What is the DOD relationship going to be to the Director-General? What is his relationship to that

little box down there called Defense Intelligence that goes through the Secretary of Defense, the position that you occupied before?

Is he to serve over the Secretary of Defense and have direct authority and responsibility to hire, fire, set salaries and to run the day-to-day activities of Defense Intelligence, or is he a coordinator, which I am concerned about?

Mr. CLIFFORD. Under no circumstances does he interfere with the responsibility of the Secretary of Defense. That office is set up by statute, and he cannot interfere with its operation. He must not interfere with the so-called combat intelligence that exists in each of the services. That is not his function.

But this whole field of intelligence has so proliferated I think we need a man at the top to oversee it.

Oftentimes, the chairman of the board of General Motors does not go in and tell each division man down the line how he runs his job, but he does issue general guidelines and directives, and those men below him carry them out. That is what I think would happen here. He does not have to interfere in the operation of the Defense Intelligence. What he wants to do is be sure that Defense Intelligence is doing its job within the framework of the intelligence community. If he feels that it is not, then it is his responsibility to take it up with the Secretary of Defense and say DIA is not doing its job.

He might find that there is a jurisdictional dispute. He would then discuss that with the Secretary of Defense.

When those disputes come up, these men all have the right to go to the President. It is expected that the President will stand behind the Director-General. It will not be very long before that man's authority is very clear in the community.

Senator PERCY. You support prior knowledge of the intelligence committee for covert activities. My concern here is that this makes Congress an actual participant in the decisionmaking process. Then, where does the oversight come from?

Mr. CLIFFORD. I do not think it does because to be an actual participant in the decisionmaking process, you have to be able to say at the end of the road that we have decided against this proposal and therefore you may not do it. I do not envision the oversight committee to work in that capacity.

Just as an illustration, the Director-General of Intelligence comes to the committee and says, here is plan A for a substantial covert operation. He briefs the oversight committee and they study it for awhile.

Suppose they were to tell him, we have been through this, we think it is valuable and we certainly are not going to interfere with your going ahead. Thereafter, the plan is carried out.

On the other hand, suppose that they vote 10 to nothing against going ahead with the operation. Then the Director-General takes that message back to the President and says, Mr. President, they voted 10 to nothing against this prospect.

I think that under our constitutional system, the President still has the right to go ahead with the plan, but I suggest to you that he really does so at his peril. He knows that the committee has, in response to the will of the people whom they are representing, said, in effect, to

the President that the people of the United States are opposed to this operation.

That is the point Senator Weicker was making some time ago. If, on the other hand, the split is six to four, the President may decide to go ahead with the plan and assume the responsibility for it. He will take whatever risks there are.

But the committee then acts in an advisory capacity, and getting back to your other concept, they are not in a live relationship. It is advisory.

But it is a very powerful kind of advice. Where the President decides to go ahead with a plan against the express wish of the committee, the committee can report to the Congress if it chooses, and ask that the appropriation for that kind of activity be removed.

The Congress has that final, ultimate weapon.

Senator PERCY. Finally, as a former statutory member of the National Security Council, do you feel that the National Security Council has itself exercised proper oversight over our intelligence activities? Do you think it can be strengthened, and could you either now or sometime subsequently for the record submit any thoughts you might have as to how the National Security Council can be strengthened so its oversight function would be more diligent?

Mr. CLIFFORD. It has not performed well in its oversight function. There is a basic reason for it.

You cannot take four men—five, if Senator Symington's bill becomes law—and give them a full-time, 8-, 9-, or 10-hour-a-day job, and then as a secondary function have them serve on the NSC. Those four men have the four biggest jobs in the country.

It has never worked very well, it seems to me.

So I suggest in the memorandum that you are not going to get the right kind or the proper degree of oversight within the executive branch using this system.

We have heard, and we read in the paper, that frequently, something will happen and they will poll the NSC by phone. Those votes are almost valueless.

I read someplace that 25 percent of the covert functions that are conducted were conducted without getting the authority of the NSC. Maybe most important of all, the oversight function of the congressional committee is to prevent excesses on the part of the President of the United States.

The CIA has been badly used. The FBI has been badly used. Their actions in the past were not always in accordance with the laws and the Constitution of the United States. These organizations were not established to go out and destroy American citizens, and they were being used for that function. Indeed the President permitted it and in some instances, ordered it.

The congressional function must be to prevent that activity, because it goes to the heart of our constitutional system.

Senator PERCY. I can assure you that as a result of your testimony and others that we have had that we are going to try. This is the 151st attempt to reform the system and we still have had only two successes. We hope we will have three.

I can assure you that we are going to stick with it until we can be successful.

Thank you very much.

Senator NUNN. Mr. Clifford, I had one other question on that hypothetical.

Let's take the second one, the six-four vote against the proposed covert activity where the President says, all right, I know you disagree but I will go ahead with it and I will assume the responsibility.

At that point you mentioned—and I think you are absolutely correct—the only recourse Congress or the committee would have would be to cut out the appropriation.

Two or three things come up there. If there is no appropriations bill and if the appropriation is already fully funded, then there is not a timely opportunity for Congress to act prior to the covert activity being carried out.

The second problem is if there is an appropriation bill before Congress or some other way a Senator or Congressman could let his feelings be known by trying to terminate the appropriation, he must go public with classified information.

I do not know that there is any answer to that problem.

First, do you agree that there is a problem and is there an answer? Is there a way you could mitigate the damage from that procedure?

Mr. CLIFFORD. It is a very serious problem and it is inherent in our system.

There have been a number of instances where the Congress felt from time to time that the President might be engaged in an ill-advised course of action, but under our system there was very little they could do about it. Oftentimes the President has had similar feelings regarding actions of the Congress.

Appropriations constitute a check or a balance. I recognize the validity of your second argument that in order to go to the heart of the appropriation you might have to go public with classified information. If the effort required that, then I think that the vote of confidentiality would very likely prevent going public with the information.

Senator NUNN. If something did not prevent it, one member—even if it were a 9-to-1 vote in favor of the action—who has the right to go public and is protected by the Constitution, as some people contend, could, by going public, in effect cast a de facto veto.

Mr. CLIFFORD. If that happens, our system breaks down. But rather than going through some long series of legislative enactments about the hearing and the punishment for that action and so forth, I think the remedy for that is immediately to relieve that man of his membership on the committee. That is a quick way to do it. And you would only have to do that two or three times and I think people after a little while would find out that the general opprobrium of being discharged from a committee would tend to maintain the confidentiality of the facts they learn.

Senator NUNN. In your view, that kind of risk is the price we pay for checks and balances?

Mr. CLIFFORD. It is the price we pay for being a democracy. They do not have to go through this agony that we are going through in the Soviet Union. Nor did they have to do it in the Third Reich. In order to preserve our system we do it.

Senator NUNN. These suggestions certainly would be an improvement over our system as we know it today, anyway.

I think that your suggestion about the new chain of command is one that deserves very close scrutiny. I think we ought to consider it very strongly.

I do not know whether we ought to solve it now or whether we ought to try to let the committee come back after a year with organizational kinds of recommendations, because this committee has not, except for the past few weeks, concentrated on the organization of the CIA. Maybe that decision ought to be made.

Do you have any observations on that?

Mr. CLIFFORD. I think there already has been too much delay. We have been through this for a couple of years.

You are just asking for my private opinion?

Senator NUNN. I am speaking strictly of the addition of that new structure at the top.

Mr. CLIFFORD. I am convinced that it is necessary if we are to obtain the result that we are seeking. I hope that the committee would put it in the bill.

Senator NUNN. You think it is a priority item that needs to be done now?

Mr. CLIFFORD. Yes; I do.

The system is not going to work well without it. I was interested that Mr. McCone thought the idea had merit. I thought a former Director of CIA would object to taking some of the powers from the CIA. I think he encountered limitations as the Chief Intelligence Officer with the present system.

Senator NUNN. You do not object to his suggestion that he have a deputy running the CIA?

Mr. CLIFFORD. I do not object, but I think he should be further removed from the CIA. By having the present CIA Director stay in charge of the agency and that being his sole day-to-day function, then the Director-General of Intelligence could be further removed. He could then look at the Central Intelligence Agency just as he looked at the other eight agencies.

Senator NUNN. Thank you very much, Mr. Clifford.

We will adjourn until tomorrow morning at 10 o'clock. At that time, we will have Mr. Ellsworth and Mr. Helms before the committee.

[Whereupon, at 1:05 p.m. the hearing was recessed, to reconvene Tuesday, January 27, 1976.]

OVERSIGHT OF U.S. GOVERNMENT INTELLIGENCE FUNCTIONS

TUESDAY, JANUARY 27, 1976

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 3302, the Dirksen Senate Office Building, Hon. Abraham Ribicoff, chairman of the committee, presiding.

Present: Senators Ribicoff, Nunn, Glenn, Percy, Brock, and Weicker.

Staff members present: Richard A. Wegman, chief counsel and staff director; Paul Hoff, counsel; Paul Rosenthal, assistant counsel; Marilyn A. Harris, chief clerk; and Elizabeth A. Preast, assistant chief clerk.

Chairman RIBICOFF. The committee will be in order.

Mr. Ellsworth?

Colonel HERRICK. He is on his way here. We were delayed in traffic.

Chairman RIBICOFF. We like to start at 10.

Suppose we start with Mr. Helms. Mr. Helms, would you proceed, sir?

TESTIMONY OF AMBASSADOR RICHARD HELMS, FORMER DIRECTOR OF CENTRAL INTELLIGENCE

Mr. HELMS. Mr. Chairman, I have no prepared statement. I thought when I received your invitation that you would probably have some questions that you would want to direct to me.

I do not have any particular line to push, so I thought I would just be as responsive as I could to anything that you are interested in.

Chairman RIBICOFF. That is fine.

I suppose no one knows better than you that the entire intelligence community of our Nation is under a cloud. I would suppose that it is impossible for an intelligence agency to do its job if it does not have the backing of the people of this country and the Congress of the United States.

Under these circumstances, do you think that the creation of an oversight committee would help to restore the confidence of the Nation and the Congress in the intelligence community?

Mr. HELMS. Mr. Chairman, during the years that I was Director, in fact, on every occasion, I have felt strongly that the question of oversight was one that should be resolved by the Senate itself. In other

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words, I do not think that outsiders have a very good feel for Senate procedures, how these various committees relate, one to the other, and it would seem to me that the Senate itself could very well decide what kind of oversight it wanted. I do not have any particular views on the matter one way or the other.

Chairman RIBICOFF. After all, how long were you Director of the CIA?

Mr. HELMS. 6½ years.

Chairman RIBICOFF. 6½ years.

During the 6½ years, you dealt with what was supposed to be oversight in the Senate.

What was your experience with it? What were the positive or negative factors as far as the CIA was concerned, as far as the Senate was concerned, as far as the public was concerned?

Mr. HELMS. Well, sir, I think the answer to that question is, there was not enough oversight.

Chairman RIBICOFF. There was not enough oversight?

Mr. HELMS. Yes.

I think there were many times when I would have liked to have been able to feel that I had more backing from certain of the more important Senators. I think there were times when I felt quite lonely, when I did not have an opportunity to share some of my problems with them on a more continuing basis.

But it seems to me that one of the problems in those years was that the Senators were very busy. I think, too, there was a very deep question that one must face as to the extent to which individual Senators wanted to become involved in the dirty tricks department that any secret service is involved in. If they go sour in later years or later months it can be very embarrassing. Someone says yes, I think that is a good idea, go ahead with it; then it goes bad, and their constituents do not like the look of it.

So I have had the feeling that not only are Senators very busy men, but on occasion, they do not want to know very much about the "dirty tricks", because they do not want to be involved in them.

If this is the duty of a senatorial committee, I suppose they can fulfill that duty.

Chairman RIBICOFF. In other words, you feel that the Senate itself, from your experience, ducked its responsibility when it came to the problems of oversight?

Mr. HELMS. Well, sir, I do not like to use the word, but—

Chairman RIBICOFF. Failed to assume?

Mr. HELMS. Yes; I think that one could say that, yes.

On the appropriations side, may I say, I never had that sensation. It seemed to me that the appropriation was gone into each year quite carefully.

Chairman RIBICOFF. One of the issues, of course, is the problem of those covert operations.

At what stage should an oversight committee be brought into the covert activity, or the covert planning? What is your thinking?

In the 6½ years, you must have been involved in many covert activities. What should be the relationship between the intelligence agency and the oversight committee?

Mr. HELMS. Well, sir, I want to explain first, Mr. Chairman, that I am not a lawyer, nor am I a constitutional expert, so I would like to be forgiven if I am a bit muddled about separation of powers and such constitutional issues as that. But it seems to me that on this question of oversight, one should be able to come to the committee and sit down and discuss a proposed operation to find out whether or not this was something that was going to be supported by the committee.

I say this for a very simple and practical reason. That is, if you are going to embark on some covert action which involves money, relationships, assets and all the rest of it, it seems hardly sensible to embark on some ambitious program like that, if your legs are going to be pulled out from under you 2 or 3 months later when you are in midstream.

Therefore, if there is going to be congressional oversight and the Congress is going to work with the executive branch in these matters, then it seems to me it has to go along hand in hand, for practical, if not legal, reasons.

Chairman RIBICOFF. When the question is raised that there is an impingement upon the Executive by getting Congress involved and giving it advanced notice of covert activities, your feeling is, leaving aside the technicalities, that it would behoove the Executive to take the congressional committee into its confidence.

In Angola, for example, the administration finds itself embarrassed today because it is very obvious—and I am talking for the Senate, the House moves today—that there is no overwhelming support for involvement in Angola.

Now the Secretary of State and the President find themselves very embarrassed to find the ground cut out from under them.

If you would have an oversight committee upon which there could be reliance and trust between the executive and legislative branches—if Angola could be discussed—it would soon become obvious that there was not basic support for that type of an operation, and that would most likely cause you to reappraise and discuss it.

I could see the Secretary of State or the President, after he was alerted by the Director of the Central Intelligence Agency to congressional opposition, to discuss this in depth with the Congress. If you had a representative group of nine Senators, you could get the feeling pretty fast of what the situation was. Under those circumstances you would realize that it would be much better not to start a covert operation if that covert operation would suddenly be cut off in midstream.

Is that not right?

Mr. HELMS. Yes, sir, I agree with that.

I want to emphasize, Mr. Chairman, that in covert operations, there are a lot of human beings who become involved in one way or another. It is a great mistake, in my opinion, to trick them, to deceive them, to lead them to believe they are going to have a certain sanctuary, a certain job to do and so forth and then have to turn your back on them and let them go. It is not only dangerous to their lives and limbs, but it may be very dangerous to their reputation.

I must say—as I say, I do not know about the constitutional issues, but as a practical matter, a day-to-day practical matter, if there is

going to be an oversight committee I think they ought to be in on the takeoff.

Chairman RIBICOFF. Mr. Helms, what changes would you make in the oversight program in order to make sure that the CIA does not engage in domestic spying activities, such as Operation CHAOS?

This was certainly beyond your charter.

Mr. HELMS. Well, sir, I do not want to get into a debate about the beginnings of Operation CHAOS. That has been gone into very extensively by Senator Church's committee.

Chairman RIBICOFF. Do you think that if there were an oversight committee that you might never have had CHAOS?

Mr. HELMS. Well, sir, I do not know. You know, Senator, as well as I do, that tempers change, times change, public attitudes change. I do not know what the attitude of an oversight committee would have been if this had been laid before them, as I understood the dimensions of it.

In any event, one of the things that I would like to mention here is that Directors of Central Intelligence, in my experience, have not held back on their oversight committees when questions have been asked or areas explored. The material has been made available to them, and readily so.

This is not an area where I have a sensation that you need to have sanctions against the Director, so that you can make him produce every single last piece of paper. As a matter of fact, I think that would be definitely harmful. You should be able to maintain the sanctity of your intelligence files and come up with a decent briefing for somebody and give him all of the implications just the way you would if you were a lawyer. I think that that is sufficient. I am not familiar in the last 3 years here since I left the Agency with exactly what has been going on in the area of the Agency and congressional oversight.

I never had any problems with any of the chairman under whom I served in being able to satisfy them on anything they were interested in.

Chairman RIBICOFF. What do you think the Director of the CIA should do if he is requested by the President of the United States to engage in an illegal activity?

Mr. HELMS. I think that his first duty is to argue it out with the President for whom he works. After all, under existing law, the Director of Central Intelligence works for the President. He does not have any other boss. It is called the National Security Council, but effectively the National Security Council is the President. Therefore, there is a direct line from the President to the Director of Central Intelligence.

The first thing he would have to do is to try to argue the President out of his request to do something illegal, and I think that in most cases, that would probably stick. If it did not, then he has a crisis of conscience, and I think every man has to decide that for himself.

Chairman RIBICOFF. Do you think, at that stage, if it were clearly illegal, that he should make that known to the oversight committee?

Mr. HELMS. I think that he has to get the President's permission to make it known to the oversight committee in a case of that kind.

Chairman RIBICOFF. So that your feeling, I would gather, is that if he is asked to do something illegal by the President of the United

States, without Presidential permission, he would not disclose that to the oversight committee?

Mr. HELMS. Some Directors might, but I would have thought that propriety and courtesy and so forth would require that he gets the President's permission to go to the Congress.

Chairman RIBICOFF. Under those circumstances, if he has a crisis of conscience, he either goes along with an illegal request of the President of the United States, or resigns?

Mr. HELMS. Yes, sir.

Chairman RIBICOFF. If he fails to resign and goes along, invariably the President will let him hold the bag. Some time in the future he would be pilloried in the press or find himself subject to criminal prosecution?

Mr. HELMS. He may very well be.

Chairman RIBICOFF. That is the chance the Director will have to take if he goes along with the President's request to do something illegal?

Mr. HELMS. Yes, sir.

Chairman RIBICOFF. Clark Clifford testified yesterday that some CIA officials seemed to believe that the Agency is above normal law.

What do feel about this?

Do you think that CIA personnel feel that they can engage in activities that may be illegal because they think it may be for the "greater good" of the country?

Mr. HELMS. I did not have that impression. I certainly never felt that way.

I do not mean to dispute a very distinguished American like Mr. Clifford, but I do not really think that I saw any evidence that people in the Agency felt themselves above the law.

There were times when there were conflicting laws to be considered and conflicting duties and so forth. For example, there is a provision in the statute that the Director is responsible for the protection of intelligence sources and methods from unauthorized disclosure. I regarded that as a duty.

I think one of the things that your committee might do is to take that provision out of the charge against the Director, because it has caused more trouble than any other single charge, the reason being that the Director is not given any tools to carry out this responsibility. He is not given any extra authority and he has a very difficult job that he has been handed.

A conscientious Director tries somehow to carry it out. In some of the cases where I got into difficulty, I thought it was my duty to pay attention to the law and not to break the law, but that law conflicts with certain others in some cases.

Chairman RIBICOFF. Senator Percy, Mr. Helms does not have a prepared statement, but he felt that he would rather respond to committee questions.

Mr. Ellsworth was a little late and I like to start the meetings at 10. Mr. Helms was here, so we started with Mr. Helms.

I am taking 15 minutes; if you had been here, I would only have taken 5, but I will give you equal time.

Mr. HELMS. Good morning, Senator Percy.

Senator PERCY. Good morning, Ambassador Helms. It is nice to see you this morning.

I think that you can, Ambassador Helms, give us a great deal of help here. We have a number of questions. I am sorry I was not here earlier, so that if any questions I might ask have already been asked by the chairman, I can read the record on those.

Our objective is to eliminate the proliferation, the duplication, the overlapping of committees and the percentage of time that the Director of the CIA and Director of the FBI are up here on the Hill.

How do we maximize the time they spend administering their agencies, yet fully and properly carry out oversight?

Possibly, I could start right there, as to what you feel the role of the Congress should be. Have we, in the past, fully measured up to our responsibilities in the oversight responsibility that we have? What should the proper role of Congress be in performing the oversight function?

Mr. HELMS. There is no question, sir, that in our society the Congress must have an oversight role in all intelligence activities.

As I said to the chairman a few moments ago, it seems to me that the manner in which that role is carried out is best judged by the Senate itself.

You gentlemen know far more about the relationships of the committees, the overlapping of the committees, the pressure of your duties, and so forth, than anybody on the outside could possibly know.

I believe that theorizing about how you might set up the ideal committee to take care of all of these problems in a very neat fashion is not going to work anyway. It looks good on paper, but the only thing that is important is how it is executed, what kind of chairman it has, what kind of vice chairman it has, what kind of membership it has, and how interested they are in carrying out the charge placed upon them.

In years past, there have been oversight committees that have existed. There they were. The energy with which they prosecuted their duties was a matter of debate, possibly.

I do not know if you have had the Senators before you and asked them how they viewed their role. This may not be a bad idea, to find out what they thought about all of this.

I mentioned to the chairman that I had thought over the years that on the appropriations side, both in the House and the Senate, that the job had been well done. They knew what was in the budget in a very precise fashion, the size of it, most of the details in it.

It seems to me that it was a very competent job.

As you probably are aware, the CIA budget is presented in considerable detail, far more than the public realizes. The material is there for any questions or staff work that needs to be done.

As far as the rest of it is concerned, oversight has been, I guess, rather good at times, perhaps not so good at others.

Senator PERCY. Dean Rusk said that he thought at the time that he was Secretary of State that he was well aware and well-informed about what the Agency was doing abroad affecting foreign policy, but he was surprised to learn subsequently that he did not know all that he felt he should know.

Would you comment on that, and why a Secretary of State would make that statement? Have you at any time subsequently learned that things were carried on by the Agency that you, as Director, did not know about and thought that you should have known about?

Mr. HELMS. I do not know why Mr. Rusk made that statement. Our Secretaries of State are notoriously busy and preoccupied men. There was never any effort to keep anything from him as far as I am aware.

On the other hand, he did not make himself available for briefings on any regular basis, as I recall. At least when I was Director and saw him, it was usually on some kind of a matter other than purely intelligence, occasionally on an intelligence matter.

That is one of the difficulties in all of this, the number of man-hours that an official can put in on a particular subject.

Right now, intelligence is very hot, so everybody feels that they have plenty of time to find out what is going on in intelligence. Five years from now, that may not be the case.

As far as the details of what happened—of course, as Director, I do not know all of the details—there have been a couple of things that went a little further than I realized they had gone. I must confess, on the other hand, that I do not find that surprising.

Senator PERCY. Was there anything major that went on in the Agency while you were Director that you have subsequently learned was carried on that you felt subsequently you should have been informed of?

Mr. HELMS. A major thing? No, sir.

Senator PERCY. No major thing whatsoever? No surprises have come up? You take full responsibility, then, for everything that has been done by the Agency under your direction?

Mr. HELMS. Yes, sir, I do.

Senator PERCY. In looking at the organizational chart, the National Security Council is at the top there, yet there have been implications throughout the course of our hearings that that may be a box that has not too much meaning as it relates to the intelligence activities, and covert activities particularly, because they are all very busy people, preoccupied with their own activities and cannot give very much oversight to this responsibility.

The suggestion has been made that we strengthen the oversight, not just of the Congress which everyone almost universally feels should be done, but also of the National Security Council.

Would you care to comment on how much oversight the National Security Council has been able to give in the past and how much you think it should properly give?

Mr. HELMS. Senator Percy, when you say "National Security Council," if you mean it as set up by statute, I agree. They did not give very much attention to intelligence matters. But the subcommittees such as the 40 Committee and other organizations obviously gave a great deal more attention to intelligence matters.

On the other hand, I will say that a lot more attention could have been given even by those subcommittees, but there again, one runs into the same problem. Maybe the Under Secretary is not quite as busy as the Secretary; usually he is. Therefore, any individuals involved in this exercise are preoccupied individuals with a big load

to carry in Government. I do not see any objection to strengthening the National Security Council's control, if you can find a way to do it, a practical way.

Senator PERCY. Have you commented on whether you feel a Joint Committee on Intelligence would be the best way for the Congress to go about it, or whether separate committees in the House or Senate would be perfectly appropriate?

Mr. HELMS. I do not have strong feelings one way or the other. I do not feel competent in that department.

I have read a great deal about the Joint Committee on Atomic Energy. That has worked very well. Therefore, a Joint Committee on Intelligence would work equally well.

It seems to me that that is an analogy that may not hold up. The problems of the Atomic Energy Committee are entirely different from the problems of the intelligence community, not only in dimension, but in kind.

Therefore, I think that one could slip very easily into an analogy and have it look very smooth, but if you examine it carefully, you might find out that the essential elements that make the Joint Committee on Atomic Energy work so well are not present with respect to the intelligence community. I do not know.

Chairman RIBICOFF. If the Senator would yield?

Senator PERCY. I yield.

Chairman RIBICOFF. Would you be good enough to send a memorandum to us of what you conceive as the differences between a Joint Committee on Atomic Energy and their problems and a Joint Committee on Intelligence, why they may be different? Would you do that?

Mr. HELMS. Yes, sir. Is there a time limit?

Chairman RIBICOFF. Two weeks' time.

Mr. HELMS. I will try to have it in your hands within 2 weeks.

Chairman RIBICOFF. If we could have it by February 16, or 17.

Mr. HELMS. I will do my best, sir. I do not know how long I am going to be here and when I go back to Tehran.

Chairman RIBICOFF. I understand. Thank you.

Senator PERCY. I think it would be extremely helpful to us. I would like to support the Chairman's request. It would be worth our time and your time to have that, because that joint committee has been referred to constantly. The problems may be a whole of a lot different. We may be dealing with apples and oranges in this case.

[The information requested and subsequently supplied follows:]

EMBASSY OF THE UNITED STATES OF AMERICA,
Tehran, Iran, February 2, 1976.

HON. ABRAHAM RIBICOFF,
Chairman, Committee on Government Operations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: When I appeared before your Committee on January 27, you asked that I write you a memorandum addressing a point I had made in my testimony, i.e., it might be useful to challenge the analogy that since a joint committee of Congress had worked well in the field of atomic energy, it would also work well in the area of intelligence. In other words, your request was prompted by my general observation that I believed the national attention is being unduly focused on the role of the Joint Committee on Atomic Energy in the perhaps mistaken idea that it would offer a useful analogy for a like oversight of intelligence, including such operational matters as covert action.

It appears to be generally accepted in American public opinion that the Joint Committee on Atomic Energy has performed its functions well. Few individuals outside of Congress know how it does its work, and I am in no position to contribute insights into the relationships between the Senators and Representatives or how they share the burden of the Committee's responsibility. The point on which I want to focus is the field of this joint committee's concern, i.e., atomic energy. Here one is dealing with important scientific matters which in essence are not readily subject to disputation by laymen. The public generally understands the incredible hazards and dangers inherent in nuclear explosions and would develop instant hostility toward anyone accused of leaking secret information which in the hands of the enemy might improve his capacity to destroy our country. These constraints on the exercise of oversight and, in particular, an abiding respect for security are inherent in the very uniqueness of the subject matter.

When, however, we look at the U.S. Intelligence Community, a complex and sensitive grouping of departmental services which provide the underpinnings of our national security and foreign policy, we find an entirely different situation. For example, it has long been obvious, even without the recent examples laid bare to international view, that the intelligence function is neither entirely scientific nor in any sense infallible. Programs, in the covert action field particularly, tend to be controversial and cause intense debate. This in turn leads to the individual Congressman taking sides and on occasion "leaking" sensitive information to fortify his interests or political position, as in such cases as Chile, Angola, and Italy. Judging from what has occurred in the past year, few people appear to feel that "leaking" intelligence secrets does harm. In fact, one might almost get the impression that it is regarded in some quarters as being therapeutic. In a joint committee it would appear to be even more difficult than usual to ascertain where "leaks" originated, whether from a Senator, a Representative, or a staff member. In this connection the question arises as to who takes disciplinary action against an implicated individual. Then there is another important consideration: how much of the oversight in the joint committee would be provided by the elected representatives of the American people and how much would rest in the hands of the professional staff who would inevitably perform the day-to-day investigations.

Without myself subscribing to one proposition or the other, I invite your attention, in connection with this problem of intelligence oversight, to two opposing propositions presently being argued by thoughtful and experienced officers in the U.S. Intelligence Community.

One group appears to hold that the Director of Central Intelligence should not be obligated by the Congress to disclose operations which are constitutionally the problems of the President. Obliging him to do this tends to undercut the oath which he still takes under the National Security Act of 1947 to protect "intelligence sources and methods and unauthorized disclosure". Also, he works for the President and has an obligation to him. He becomes a shuttlecock among contending forces. This same group further espouses the view that the Congress should instead look to the President for original disclosure of classified information and general accountability for the conduct of intelligence operations. In a word, the thesis is that the authority to waive classification and security procedures in these sensitive and complex matters should remain with the President.

On the other side of the debate a smaller group of intelligence officers holds to the proposition that whatever request the Congress should make for information about intelligence activities, however delicate, should be satisfied. This case has been articulated in public on various occasions. The same group appears to have decided that the general interest is best served by a bending of the established Presidential prerogatives in such a fashion that Congress hereafter would make its own ground rules as to how and about what it wished to be informed.

I believe that this is a fair description of the major opposing views in the Intelligence Community regarding the prerogatives of the President and the Congress. It is difficult to see how this conflict can be constructively resolved in the present atmosphere of suspicion and distrust which has settled over the aims, purposes, and means of foreign intelligence. For the Executive Branch and the Legislative Branch to work together in the delicate field of intelligence, there must be mutual trust and confidence. Without this ingredient, no covert action operations can be undertaken by our intelligence services with any prospect of success.

Mr. Chairman, nothing in the foregoing should be interpreted as indicating a lack of appreciation for the difficulty of the task which confronts you on how to handle intelligence oversight. As I indicated in my testimony before you, Senators are best equipped to decide these organizational issues, given their familiarity with the workload and the circumstances dictated by the Senate's existing committee structure. Although I am no lawyer, constitutional or otherwise, it occurs to me that your task would have been made considerably easier if this issue of divulging Executive secrets had been joined between the Executive and Legislative Branches and had then moved logically to the Supreme Court for review and adjudication in the constitutional context.

I trust that this memorandum is responsive to your request of me.

Sincerely yours,

RICHARD HELMS.

Senator PERCY. Do you feel that there should be an oversight committee in Congress to oversee all intelligence agencies, or, if not, how do you separate foreign intelligence and domestic intelligence? How do we separate out Defense Intelligence for instance, for oversight?

Mr. HELMS. I do think, Senator Percy, that it would be an improvement to have one committee looking at all of the intelligence organizations, including the intelligence part of the FBI.

Let me give you one reason why I feel this way. If you are going to have an intelligence community, it ought to be the sum of its parts. In order to have coherence in this in the minds of Senators, they obviously have to listen to the various Directors and the problems of the various agencies and see if it is, in fact, behaving like the sum of its parts.

I was speaking a few moments ago of protection of sources and methods and I stated I thought that responsibility should be taken out of the law and placed elsewhere in Government. I think it is very important that the FBI and CIA work very closely together in certain jurisdictions, particularly in the counterespionage field. I believe that any lack of collaboration and cooperation ought to be a matter for intense congressional oversight. If the Agency is going to be forced into doing certain things that the FBI should be doing in order to protect its security, the Agency security—and this is something that I found to be the case on occasion—then this is a very improper way for the thing to function.

On the other hand, in times past, it was very difficult to get Mr. Hoover to do certain things or to pick up the ball in this area of responsibility. This is an area where I think an oversight committee could be helpful by seeing that this collaboration is taking place on a day-to-day basis.

Senator PERCY. Do you think that the counterintelligence functions of the FBI fall within the jurisdiction of a proposed new committee?

Mr. HELMS. Yes, I certainly would. Somebody has to oversee those things on both ends, both foreign and domestic.

Senator PERCY. I would like to ask about the domestic activities of the CIA.

We have had discussions on this in the past, in hearings. I was alarmed, as you will recall, when we learned that the Chicago police were being trained by the CIA and it was in a crime technique that had been developed by the CIA. I thought there was no reason that we should not have it, but my feeling was that the statute really required the CIA to pass that on to the FBI and the FBI to carry that on domestically.

I think subsequently you agreed, and implemented that policy.

As I understood it at the time, you fully concurred, Ambassador Helms, on the principle that the CIA should stay out of domestic activities.

Have you subsequently learned of any domestic activities that were carried on that possibly should not have been carried on under a strict interpretation of that 1947 charter, such as campus activities?

Mr. HELMS. I do not know to this day exactly what every detail of Operation CHAOS is or was. I simply have not been informed.

I do not know what Senator Church's committee has come up with in their rather thorough investigation of this. What I saw in the Rockefeller Commission Report did not sound correct to me. I may be wrong.

I do not even know to this day whether some of the allegations were correct or not correct.

Except for that, I am quite persuaded——

Senator PERCY. Is there any reason, for instance, at all, why the CIA should be involved in campuses in the United States where there may be subversive elements among youth organizations? Is that a function of the FBI and not the CIA?

Mr. HELMS. No question about it.

Senator PERCY. So that any such actions carried on by the Agency——

Mr. HELMS. They should not have been doing it.

Senator PERCY.—should not have been carried on.

Do you know whether any such activities were carried on under your administration?

Mr. HELMS. I do not know, sir. I saw alleged in a newspaper this morning something about it. I do not know the details. I do not know whether the report is true or not.

Senator PERCY. Again, this is not an inquiry into your administration, it is an inquiry into how much oversight is needed. The principal question we have been concerned with, one of the principal questions, is whether really the CIA has been a government unto itself. Even in the protection of its own Director, agents might feel that we will not bother him with this; he may have to testify; he may have to tell somebody about this sometime. We had better not let him know what we are doing.

Whether that attitude exists or not is very germane to what attitude and approach the new Director takes and in how he implements policy.

Again, I would ask, as long as such activities in your judgment today were improper, if such activities were carried on while you were Director, how could they be carried on?

You have testified that nothing major occurred without your knowledge. What then is the problem in the Agency—and believe me, having run a widespread, worldwide organization of 14,000 people, which is pretty small compared to some of the complexity of these operations, I did not always know what was going on. But I damn well would find out when something was going on that I was not told about.

That is what we want to find out now, to get a handle on this thing, what does the new Director have to do? How do we change an attitude that may have existed in the protection of the Director?

I do not question the loyalty of any of the men and women in the Agency, but they had a code of their own that now, in retrospect, may have to be changed in the light of the new modus operandi we are developing.

Mr. HELMS. I would think now, 3 years later, that it might have occurred to even the most limited minds in the Agency that things have changed.

Senator PERCY. I am sorry; I did not hear you.

Mr. HELMS. I said that 3 years later I think it might have occurred to even the most limited minds in the Agency that the atmosphere had changed.

Senator PERCY. Yes; that is right.

Mr. HELMS. That is not a matter that you have to be concerned about.

Senator PERCY. You do not feel that the new Director will have a problem in that respect?

Mr. HELMS. I think he would have none. His problem is going to be of an entirely different kind.

Senator PERCY. Thank you.

Senator RIBICOFF. Senator Weicker?

Senator WEICKER. Thank you, Mr. Chairman.

I really have no questions, however I do not know why Mr. Helms selected the time frame 3 years later because that is exactly what I addressed my comments to. Three years ago, Mr. Chairman, you and I saw each other in a set of hearings here on the Hill. Really, the appearance of this witness only serves to remind the Congress of what they have not done in 3 years.

The imprimatur of the CIA was all over Watergate. It is the very reason why the Church committee was created. This was not within the province of a Select Committee on Presidential Campaign Activities to investigate, yet there was enough evidence as to abuses that it was felt that the matter should be pursued.

Here it is, 3 years later, and even at that time, it was obvious that some reform was in order, whether internally within the Agency itself, or as far as the oversight procedures relative to the Congress. The Congress has not done one darn thing.

Sure, we know additional facts, Mr. Chairman, as to the form of those abuses, but with the exception of these hearings there has not been one effort, not one tangible effort to act on the truth.

Mr. Helms, a former Director, made the statement that in 5 years, intelligence may not be such a hot subject, and I concur with him. In fact, I predict that in another 2 years, it will not be such a hot subject, or 3 years. That would be the great tragedy.

Just by the very nature of the activity, it requires the continued vigilance of not only those in the Agency, but on the part of the Congress and the American people.

To date, there has been no evidence at all that that vigilance is going to be exercised, so I have absolutely no questions at all. I have gone all over this ground in the past, very frankly, with the Director.

I think that we realize that there were shortcomings 3 years ago. He realized it, the Congress realized it, the American people knew about it.

It is now 3 years later; we are not going to cover that same ground again. The ground that has to be covered now really belongs in our bailiwick, not in the bailiwick of Directors or Presidents or anybody else.

If we fail to act, we have nobody to blame but ourselves.

Chairman RUBINOFF. Mr. Weicker, it is the intention of the Chairman to complete these hearings on the 6th of February. That is the day we take a recess. We return on the 16th. I will call markup sessions on the 18th of February.

If we can get a quorum of the committee, in the absence of television cameras, we can get a bill out to the Rules Committee by March 1.

So if we have the cooperation and a legal quorum, we will get out a bill.

Senator PERCY. The minority will be there on that day, and you will get that quorum.

Senator WEICKER. I want to make it very clear that my remarks are not at all directed toward the chairman. He indeed has been the only one who has been willing to support a few of us in the battle to bring about the reform. I could not agree with him more when he says when the television lights go out, if the committee will be here. That was the whole problem with Watergate. As soon as those television lights went out, that was the end of the subject.

It was not the end of the subject. The problem was that the facts were then known and the second part of that particular play was to act on the truth as we knew it, and we have not done that.

I want to commend the chairman in his efforts in this direction.

Chairman RUBINOFF. Senator Glenn.

Senator GLENN. Thank you, Mr. Chairman.

I am sorry, Mr. Helms, that I was not here earlier to hear all of your comments. If my questions have already been asked, please say so, because I do not want to plow old ground.

I am concerned, though, on what level our interface with whatever type of committee or oversight function we set up can be effective.

Depending upon whether it is going to be only at the Presidential level, whether it is going to be only at the National Security Council level, or at the CIA, NSA, FBI, all these different levels, it will, I think, determine the setup that we would want for this committee to have—to begin with in staffing and so on.

We had Secretary of State Rusk, former Secretary of State, testify the other day that he thought when he was Secretary of State he knew everything that was going on and he now finds out that he did not know all of the things going on. They were being handled separately and decisions were being made quite outside of his knowledge to do certain things in the covert area, including some of the assassination plans, for instance.

We are not on firm ground in establishing our committee with this oversight function unless we can determine where these decisions are being made, and I do not really have a feel for that yet.

Do you have a suggestion as to exactly what should be the committee's contact point? Or, the ultimate question, I guess, should there be multiple contact points in this oversight?

I guess that is two questions.

Mr. HELMS. To answer the second question first, sir, I think that an oversight committee ought to feel empowered at any time to call any member of the executive branch involving intelligence matters. Traditionally, I feel that intelligence has been developed by the Director of Central Intelligence and the chiefs of various intelligence agencies. That is not to say it would not be a good idea to call the Secretary of State or the Secretary of Defense on intelligence matters from time to time when it seems appropriate.

I really do not think, sir, that you need to write that into the law or the guidelines under which the committee would work. I think that a good chairman would be able to make those decisions without any trouble. I do not think any member of the executive branch would decline to appear.

Senator GLENN. This would mean perhaps then that you would have to have quite a large staff if you had the capability of going to all of these different levels.

I asked some questions the other day, the one that has received so much press attention, obviously it makes a good case in point: assassination plans; were these known by the President in each case?

Mr. HELMS. I do not know, sir, whether they were or not.

Senator GLENN. That is a good case in point, then.

Did the National Security Council know of the assassination plans?

Mr. HELMS. I do not know, sir.

You are going to find, Senator Glenn, when it gets into that area of activity, you are going to find a lot of people ducking and saying they did not know, and so forth.

In our history, if we get back into that area, you are going to find the same thing all over again. Why should we kid each other?

Senator GLENN. I agree with you completely.

From our standpoint, when we are trying to establish oversight, we have to reach all those points people are ducking into and we are not finding out what is going on. That is the main point. Unless we can catch all the duckers, we are not going to know what is going on in intelligence and our oversight functions will be meaningless, a facade, a sort of papier mache.

That has been my concern all the way through this. If it is to be a powerless facade, I would rather not see any oversight committee set up. It seems to me I would rather dump it all in the lap of the Executive and say, "You have not been responsible to the American people," than I would be to set up a committee for oversight that is not really overseeing anything.

Unless we can get to where these decisions are being made, it seems to me that we are in a sort of futile drill here.

I am not going to give up. I think we can perform a very valuable oversight function.

Do you think the National Security Council should have the full intelligence sack brought to light by them? Should that be a center point that we can make or a central contact?

Mr. HELMS. That is where the law now says that the Director of Central Intelligence reports, therefore I think it would be a logical place to put it.

Senator GLENN. How about the other activities, NASA and the individual military services and intelligence activities that now are co-

ordinated by the CIA? Do you think that CIA function as the coordinating activity is adequate now? Should that be expanded?

Mr. HELMS. I do not think that it is adequate for these oversight purposes now; no. I think you would have to call the chiefs of those services, or the Secretary of Defense, who is responsible for a large number of these agencies. It would be his job to insure that these things were going on, or an Assistant Secretary operating on his behalf, perhaps.

Senator GLENN. As the head of CIA, did you ever feel that you were not being given all of the information that these other agencies were developing?

Mr. HELMS. I do not believe that I ever had the sensation that any information had been denied to me, if I inquired about it. I do not know if I thought that I had it all. I did not think it was necessarily my job to have it all.

Senator GLENN. I was not thinking so much in the area of being denied information that you requested. It would be difficult to deny you.

What I am trying to get at, are other people developing subplans here, plans that go off on their own, making decisions that will affect our national posture with regard to the whole world? Are people at quite low levels making some of those decisions then maybe they do not want to tell the boss because this is something that maybe the boss should be protected from, he should not know?

Perhaps that is where we have gotten in trouble in the past. If so, our oversight should be set up to look into it at that level.

Mr. HELMS. I think that is right.

Senator GLENN. Is this a setup where you thought the NSA, for instance, and the military services had kept you fully apprised voluntarily of everything they were doing and everything that they knew about it, rather than having you request it from them and saying you were not denied this information?

Mr. HELMS. No, sir, I do not think that was expected, that all details of the operation would have been given to the Director of Central Intelligence under the old groundrules. I do not know how it is now. I have been away for 3 years.

I do not know what has transpired in that period.

Senator GLENN. Do you feel that the groundrules should be changed that we would legislate that it would be illegal not to inform people?

Mr. HELMS. It might save the oversight committee a considerable number of witnesses if you had one man who knew it all.

Senator GLENN. I agree.

Thank you.

Chairman RIBICOFF. Thank you very much, Ambassador Helms. We appreciate your coming here. You have lived through all of this. Your knowledge of the whole operation will be most helpful to us.

Thank you very much for your appearance today.

Mr. HELMS. Thank you, Mr. Chairman. May I be excused?

Chairman RIBICOFF. Certainly.

Mr. Ellsworth, please.

**TESTIMONY OF ROBERT F. ELLSWORTH, DEPUTY SECRETARY OF
DEFENSE**

Mr. ELLSWORTH. Thank you very much, Mr. Chairman.

Mr. Chairman and members of the Senate Government Operations Committee, I appreciate the opportunity you have afforded me today to present the views of the Department of Defense on the issue of congressional oversight of the Nation's intelligence organizations.

At the outset, let me emphasize that Secretary Rumsfeld and I both believe strongly in the need for effective congressional monitoring of the intelligence community. Precisely how the Congress organizes itself to accomplish its oversight role is, of course, for the Congress to decide. Since this committee has asked for our comments, however, I will offer some observations.

First, I would like to observe that the existence of so many committees of Congress engaged in oversight of the intelligence community suggests some degree of uncertainty on the part of Congress about how to handle the oversight function.

Last year in addition to the normal oversight committees—the Senate and House Armed Services Committees and the Senate and House Appropriations Committees—a number of other committees and subcommittees undertook to exercise some degree of oversight over various aspects of the intelligence community.

Last year there were some 24 appearances before House committees by 15 key Defense intelligence personnel, and 15 appearances before Senate committees by 11 key Defense intelligence personnel. Now this year, both the Senate and House Select Committees on Intelligence are proposing the creation of follow-on permanent intelligence oversight committees.

The proliferation of competing intelligence oversight committees poses two major problems. One problem is the number of man-hours consumed in duplicative efforts. The other problem concerns the danger to secrecy which inevitably occurs when more and more people know about and talk about intelligence activities.

If the Congress can help resolve these two problems by creating one strong oversight committee, which the rest of the Congress will trust to monitor the intelligence community, the Department of Defense would welcome that committee.

On the other hand, if another committee is created to exercise intelligence oversight, in addition to those which already serve that function, we would have some reservations.

We assume that the driving force behind the creation of the Senate Select Committee on Intelligence—and indeed the House Select Committee—was the perceived need to insure that the abuses which had surfaced are corrected and that measures are taken to guard against abuses in the future.

For our part in the Department of Defense, we moved quickly to correct the abuses which had occurred and to create mechanisms to continually review our intelligence and investigative organizations.

In 1971, for example, the DOD created the Defense Investigative Review Committee—DIRC—to oversee all DOD investigative and counterintelligence operations. I believe the Senate Select Committee has expressed satisfaction with the way the DIRC operates.

In the area of foreign intelligence collection, including collection by Defense agencies, I would like to suggest that the committee give consideration to the idea of creating a communitywide Inspector General—IG—for intelligence who would be appointed by the President and confirmed by the Senate for a fixed term which is out of phase with the term of the President, that is, for 3, or 5, or 9 years.

This would provide both the President and the Congress with an IG possessing some of the independent quality of a member of the Federal Reserve Board, for example.

This independent status should give Congress confidence in the ability of the Inspector General to withstand ad hoc political pressures from any future White House staff.

Of the bills now before this committee, the bill prepared by the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities represents the latest and most comprehensive effort to assert congressional prerogatives in the areas of national and foreign intelligence.

However, in translating those propositions into legislative form, the executive branch and the legislative branch have understandable differences as to how to proceed.

In the succeeding pages, I will address the language of the Senate Select Committee bill and the extent to which its provisions warrant rewriting.

First, the requirement to be kept informed. The requirement that the Committee on Intelligence Activities be kept fully and currently informed about all intelligence activities, and that documents and witnesses be produced whenever requested, poses a fundamental issue as to the supremacy of each branch within its own assigned area of constitutional responsibilities.

The failure of the proposal to respect occasional claims of constitutional privilege—claims which are expressly recognized in *United States v. Nixon*—and the unqualified obligation to inform the committee about intelligence matters, whether or not requested, has already been addressed by other witnesses.

During the year long investigation conducted by this Senate Select Committee on Intelligence, pursuant to Senate Resolution 21, the Defense Department furnished literally thousands upon thousands of pages to the committee. It also made available for interviews and hearings large numbers of DOD personnel concerned with intelligence operations.

However, these responses were made to specific requests from the committee rather than to any generalized charge to disclose information. Further, on those occasions when the release of specific information would not be in the public interest—because it involved communications to or from the President or because its release would jeopardize sensitive national security activities—means were found to meet the needs of the committee without violating the historic and well-recognized separation of powers doctrine.

This recognition by both sides that the Congress does not have the power to subject the executive branch to its will, any more than the executive branch may impose its unrestrained will upon the Congress, avoided unnecessary confrontations. To avoid these difficulties in the provision calling for the furnishing of information to the committee,

it is recommended that the proposal be modified so as to require the Intelligence Community to supply "information and timely intelligence necessary for sound decisions affecting the security of the Nation," as used in section 1 of the Senate Select Committee bill.

There are those who contend that the disclosures about past activities of certain foreign intelligence organizations necessitate daily oversight. When it is suggested to them that a general reporting requirement is sufficient, they reply that the only way they can determine whether the reports are accurate is to keep a constant, almost micrometric track of what is going on.

As Attorney General Levi stated in his remarks to the Administrative Conference of the United States on December 12, 1975, "The line between that and their management of what is going on is a very slight one."

Given the kinds of oversight proposed by some, it is clear that they have forgotten or choose to ignore the fundamental principle of our system that persons entrusted with power in each of the three branches of Government must not encroach upon the authority confided to the others. Execution of the laws and the conduct of the executive branch rests, not with an oversight committee, but with the Chief Executive.

Next, the prior notification requirement. The provision requiring advance Senate notice before a designated "intelligence activity" may be initiated, represents an unacceptable infringement on the authority of the Department of Defense to conduct intelligence operations essential to the conduct of its national defense mission.

Under our constitutional system, this Department and other departments and agencies of the intelligence community are answerable to the Chief Executive. We cannot be fettered in actions of this nature by a requirement that presumes there will be no obedience to Presidential instructions until after a Senate committee has been "fully informed of the proposed activity."

It is assumed that the genesis of this provision arises from allegations that certain members of the intelligence community actively engaged in clandestine activities to overthrow an unfriendly foreign government, or to the effect the assassination of their leaders.

In any sense which we in DOD understand, this kind of operation is not an "intelligence activity," that is, it is not concerned with the "collection, analysis, dissemination, and use" of information.

Yet, since the committee can designate anything it pleases as an "intelligence activity" requiring advance notice, even the most modest and noncontroversial intelligence operation could be subject to advance Senate committee notification.

For example, the committee could insist that no sensor devices be placed in country *x*, no intelligence agents be transferred to country *y*, and no intelligence-gathering operations even overt ones, be conducted in country *z* without first consulting the committee.

Should the executive branch ignore the advice of the committee, the latter could vote to disclose publicly the full operation—thus effectively negating the entire exercise. Only if the President himself certifies that "the probability of grave harm to the national security" outweighs the "national interest" in disclosing it, would the committee withhold publication. But even then, the bill reserves the right of the

committee to refer the issue to the Senate, which presumably could then override the Presidential certification.

The foregoing presumes that a committee, and its individual members, will scrupulously adhere to these procedures. Experience over the past year has shown that this would not necessarily be the case.

Both the Senate and the House select committees have conceded that despite formalized security control procedures, there are few effective brakes on an individual Senate or House Member from disclosing what he alone decides is in the public interest.

The practical effect is that any single Member of Congress can prevent, or bring to a grinding halt, an extremely sensitive ongoing operation simply by issuing a public statement.

Next, the authorization question. In support of the general intent to increase congressional oversight of the intelligence community, it has been suggested that congressional authorization of the intelligence activity be separated from the major Defense authorization bills.

This proposal may seem simple in concept. In practice, however, an effort to distill mission-oriented information from the functional construction of the congressional authorization/appropriations process would be extremely difficult and confusing to both the Congress and the Defense Department.

Congress authorizes and appropriates funds, and at times sets ceilings, for such budget categories as military personnel, investment, operations, and research and development. In DOD, accounting systems develop these figures in the aggregate to support functional budgetary request.

In the Defense Department, intelligence is a support function integral to our combat elements. To a considerable degree, it lives off other integral support functions such as logistics, research and development, procurement, and construction.

It would be extremely difficult to break out of those categories the precise amounts of money which support intelligence and therefore should be authorized and appropriated for intelligence alone.

In addition, the line between so-called national and tactical intelligence is not that easily defined. Many intelligence functions, even at the national level, have tactical output and orientation. Many tactical organizations provide both collection and analysis to the national level.

How does one separate these tasks on a reasonable basis? In the research and development area, many tactical efforts, such as avionics, have major, inherent intelligence uses and provide spinoff possibilities for further intelligence-related development.

How does one approach this problem on a basis that will lead to proper information, decisionmaking, and resource allocation?

Finally, Mr. Chairman, I believe that we should all recognize that the Congress and the executive branch have cooperated in the most extensive investigation ever of this Nation's intelligence community. Shortcomings have been revealed and excesses disclosed. I am pleased to note that while the record of the Department of Defense has not been perfect, it is generally recognized to have served the Nation well.

It is now a question of where we go from here. Do we need a continuing investigation of intelligence activities?

Certainly, the Congress has the right to oversight: that is not in question. But how should that oversight be conducted? Should it be

through an extension of an investigative type committee or should it be through the established committees of the Congress?

This is the judgment which the members of this committee and the Senate must make.

In fact, there has already occurred a change in how oversight is being conducted. For example, in a letter to the Secretary of Defense, dated September 25, 1975, the chairman of the House Appropriations Committee made it very clear how intelligence funding would be addressed by his committee in 1976.

I offer these extracts from Mr. Mahon's letter:

The committee is concerned about apparent attempts to lessen the visibility of intelligence funding. Therefore, the committee directs that the 1977 budget presentations include manpower and dollar amounts for intelligence, direct support, and intelligence-related activities.

The committee insists that the total cost of intelligence be presented to the Congress, and by requiring submission of justifications for these programs the committee hopes to assure the accomplishment of this goal.

The Defense Department and agencies are following this directive and are supplying to the committee a thorough justification of intelligence and intelligence-related activities in the fiscal year 1977 budget.

Thank you, Mr. Chairman.

Chairman RIBICOFF. Thank you, Mr. Ellsworth.

I think the committee will confine ourselves on the first go-around to a 10-minute time limitation. If there are further questions, I will give the members an opportunity to question further.

Mr. Ellsworth, the House Intelligence Committee's final report called for the abolition of the Defense Intelligence Agency.

What is your reaction to this?

Mr. ELLSWORTH. I have not read that report, Mr. Chairman.

Chairman RIBICOFF. What about the concept?

Mr. ELLSWORTH. It is not the first time that someone has suggested the abolition of the Defense Intelligence Agency. I think that it is too soon to make a judgment on that subject.

The Defense Intelligence Agency was created in 1961 for two or three reasons, which still have validity. In the first place, it was created so that the Secretary of Defense might have his own analysis of information on foreign military developments, from an intelligence point of view, in order that he might have an independent way of doing his own planning, that is, independent of the military services.

I think that is still a valid objective and a valid reason for the existence of a Defense Intelligence Agency.

Another reason for the creation of the DIA in 1961, was to eliminate unnecessary duplication of intelligence work that was being done by the military services. I think that is still a valid reason for the existence of a centralized Defense intelligence organization—separate from the Central Intelligence Agency—within the Department of Defense. DIA has served that legitimate purpose.

The problem that we have had with the Defense Intelligence Agency, as I see it the same problem that we have generally with all intelligence in this Nation. That is, there are weaknesses in the quality of analysis and estimates that our intelligence community provides to us.

I do not think that there is anyone in the intelligence community that would take issue with that.

Our objective is, as far as the DIA is concerned, to very substantially improve the quality of the analysis and estimates that the DIA produces for the Secretary of Defense and the Joint Chiefs of Staff.

If we cannot achieve that objective, then we have got to think of some other way of structuring defense intelligence activity so that we can improve the quality of the finished intelligence product.

Chairman RUBIOFF. As I understand your testimony, you feel that the executive branch should not be required to inform an appropriate committee of the Congress concerning plans for covert operations.

Suppose you had a plan involving many, many millions of dollars which would entail a serious international risk.

Do you think that under those circumstances Congress should not be brought in?

Let us take the current problem of Angola. Here is a covert operation involving a lot of money and serious foreign policy considerations. Now the Secretary of State and President find themselves embarrassed because they fail to have congressional support. Yet if there were discussion before this were undertaken, the Secretary of State and the President might have had a different point of view.

When, in your opinion, should that committee be informed of covert operations?

Mr. ELLSWORTH. Senator, it is not my belief that the Congress should not be informed of a covert operation. I attempted, in my testimony, to draw a sharp distinction between covert operations on the one hand and what we, in the Defense Department, regard as intelligence on the other hand, which is the collection, analysis and dissemination of information. My comments on the select committee's proposed bill about information related to the question of being required to provide information on all intelligence activities, by its terms, the bill would require that the Congress become involved in the management of day to day intelligence activities, as far as the Defense Department is concerned.

Chairman RUBIOFF. Do I understand the difference is that you object to the day-to-day operations, but when it comes to basic policy considerations of the covert operation there would be no objection on your part to bring in the oversight committee?

Mr. ELLSWORTH. I have no problem, for example, with the testimony of Ambassador Helms a few minutes ago that it would be desirable if the executive branch contemplated a covert operation of the Angolan type for the executive branch to inform the Congress in some appropriate way. I have no problem with that measure of congressional oversight.

I would hope that the committee and that the Senate would in its work, draw a very sharp distinction between covert operations on the one hand, and intelligence collection, analysis, and dissemination on the other hand. They are two entirely unrelated functions of the executive branch, and I think that it is difficult to overstress the importance of keeping those activities separate.

Now, then, as far as Angola is concerned, or that kind of operation, yes, I certainly agree that it would be desirable for the Congress to be onboard at the takeoff of an operation of that kind, and if the indications are, upon consultation with the Congress, that that is not the kind of an operation that would be supported down the line, then I

think the executive branch would be well-advised not to initiate the operation.

If I might just say as a footnote, I was not involved in the beginnings of that or in the consultations, but it was my understanding that the Congress was consulted with regard to Angola, in accordance with procedures that had been worked out between the Congress and the executive branch. I do not know that for a fact, but I had thought that that had been the case.

Chairman RIBICOFF. Mr. Ellsworth, we are going to start marking up our legislation on the 18th. We do not have the Church bill before us. We have no suggested draft of legislation from the administration.

I do not know what the administration's intentions are. I was going to suggest to my colleague Senator Percy, the ranking minority member of the committee, with whom I work very closely, that during the period of the congressional recess our staffs get together to try to work out many of these problems so that suggestions may be presented to the members of the full committee before the markup.

I agree with Senator Weicker that this is something that should be achieved and accomplished as soon as possible. I would hope that the administration, because they are concerned, and rightfully so, would present to the Congress, the thinking of the executive branch before the 6th of February.

Mr. ELLSWORTH. The 6th of February.

Senator PERCY. I will have underway an endeavor to learn from the administration whether they will have that or not. I will call directly to the White House and convey to them your invitation for them to do so. I think it would be to the advantage of the administration to give us guidelines.

Certain areas are our prerogative, obviously, but it is always helpful to have the best thinking the administration can put into it.

Mr. ELLSWORTH. We, on our part, will be glad to cooperate, Mr. Chairman and Senator Percy.

Chairman RIBICOFF. One final question.

I assume that your testimony was cleared with the Secretary of Defense and the Office of Budget and Management?

Mr. ELLSWORTH. I do not know about OMB; it was cleared with the Secretary.

Chairman RIBICOFF. Is it the policy of the administration to recommend a new office of Inspector General or Director-General of Intelligence?

Mr. ELLSWORTH. No, that particular part of my testimony I was permitted to give without objection, but that is not a policy.

Chairman RIBICOFF. You do not think it will be a policy?

Mr. ELLSWORTH. I do not know.

Chairman RIBICOFF. You do not know.

I think that we need oversight, yet not only on the congressional side. My feeling is, as I follow these hearings and follow the controversy, that the executive branch is deeply in need of a better oversight arrangement, and I would hope in discussions within the executive branch that you would urge the Inspector General concept.

I think it would be most helpful to both the executive branch and to the Congress, not only today, but in the years ahead.

Mr. ELLSWORTH. Thank you, Mr. Chairman. I am doing that, and I will continue to do that, particularly now that I have been encouraged to do so by the distinguished chairman of this committee.

My notion is that what we all need is a way, or various ways, of restoring public confidence and trust in and support for U.S. intelligence activities. It seems to me that an Inspector General function would be one way, hopefully a lasting way, of working in that direction. But as I say, it is not official administration policy.

Chairman RUBINOFF. Looking at all those boxes, we have a lot of competition here between all of these intelligence agencies, yet the Director of Central Intelligence is also the Director of the Central Intelligence Agency. I think it would be very important for smooth functioning—in keeping the Secretary of State, Secretary of Defense, and the President advised—to have someone independent of the Central Intelligence Agency who is answerable directly to the President.

Mr. ELLSWORTH. I could not agree more.

Chairman RUBINOFF. Thank you very much.

Senator PERCY?

Senator PERCY. Secretary Ellsworth, first I would like to say that I admire very much the fact that you have come up with some creative ideas and have been able to present it with the concurrence of Secretary Rumsfeld, even if it isn't an official administration position. It is a darned helpful idea.

I think all the way through your testimony you have been extremely specific and helpful.

In one area you did reinforce my deep concern as publicly expressed a number of times that we really not, in our overreaction to this whole business, become part and parcel of the operation. We forget that we are legislators and not executors and that we should not become a part of the accounting department rather than recognizing our role is to be the CPA, the public accountant. That objectively can be done without having to be part of the management. We can have an oversight section, but if we become part and parcel of all these decisions we have lost our objectivity. Then where is the oversight?

If that happens, you are going to have to create a fourth branch of Government for oversight.

I will do everything I can not to have Congress assume that responsibility so we can be objective in our oversight. I think it would make your job impossible if we did.

You cannot run this Government by committee. We are the most unmanageable committee around—535 members of that committee.

We will try very hard to adhere to the principles you have laid down which I thoroughly agree with.

I am a little surprised to find, however, the need for an Inspector General. Is that implying that we do not now have Inspectors General as such in the CIA and in the Defense Intelligence activity?

Is there no such function, since it has been proven to be such a worthwhile function in so many agencies in the Government?

Mr. ELLSWORTH. There are inspectors general.

Senator PERCY. Does the CIA have one?

Mr. ELLSWORTH. As far as I know.

Senator PERCY. Does Defense Intelligence?

Mr. ELLSWORTH. We have a number of inspectors general in the Defense Department.

Senator PERCY. In Defense Intelligence, specifically?

Mr. ELLSWORTH. We have in the Department of Defense the Defense Intelligence Review Committee, DIRC, set up in 1971 as a consequence of revelations of some indiscretions and illegalities in the counterintelligence area; that committee has functioned as a kind of overall Defense Department inspector general, although it is focused on counterintelligence and investigations rather than foreign intelligence.

It has served well. The select committee has expressed satisfaction about it. However, it does not really satisfy me entirely. In my new set of responsibilities, I am looking very seriously at the possibility of creating in the Defense Department, separate from the Defense Intelligence operations and operating agencies, and attached either to the Deputy Secretary's Office or in some other way independent of the operating agencies, an Inspector General institution which would exercise that independent and autonomous function which is so necessary, it seems.

Senator PERCY. I have been trying, many of us have, to streamline the President's office somewhat so that he does not have so many people reporting to him. You have this office created by the President, that is, nominated by the President and confirmed by the Senate. But from the standpoint of day-by-day reporting, to whom would the Inspector General report, from a practical standpoint?

Mr. ELLSWORTH. From a practical standpoint, he would have to report to the President. He would certainly be in touch with the Secretaries of State and Defense. He would certainly be in touch with the CIA and its head. He would be in touch with the appropriate committees of the Congress.

I want to stress that he would be, according to my concept, a fellow—or an institution, one should say—that would have a certain degree of autonomy and institutional freedom by virtue of the fact that he was appointed for a fixed term of years in that office and the fixed term of years overlapped or did not coincide with the terms of office of the President, so he would be autonomous from the White House staff.

Senator PERCY. Would you differentiate, for clarification of your concept, between a suggested Director General that has been proposed that would be an overall head for all intelligence and the Inspector General?

Would the Inspector General, in a sense, be the internal auditor for the operation?

Mr. ELLSWORTH. In a sense you could say that, I suppose. I do not envision this Inspector General having functions that would involve himself in the supervision and direction of the operations of the operating intelligence agencies, which is what I think would be characteristic of this so-called DGI that has been proposed.

Senator PERCY. Roughly, Secretary Ellsworth, what proportion, what percentage of our total intelligence cost is involved in the Defense Intelligence activities?

Mr. ELLSWORTH. About 80 to 85 percent of the total cost of intelligence-related operations lodges in the Defense Department in one way or another.

Of course, on the other side of that coin, some 85 to 95 percent of the consumers of intelligence are either the tactical commanders, the commanders of the unified and specified commands, the Joint Chiefs of Staff, the weapons developers, or the force planners in the Defense Department. One tends to forget that the greatest consumers of intelligence in terms of volume of requirements and work done are the military services and decisionmakers in the Defense Department.

Senator PERCY. Does it bother you that the Defense Department intelligence embraces 80 to 85 percent of the total but actually reports to the Director of the intelligence community who is the head of the CIA, which is relatively speaking, budgetwise, a small part of overall intelligence?

Could you describe your working relationship with the Director of the CIA, how you meet with him, how frequently you meet, how closely you coordinate your activities with Mr. Colby, and how you intend to, with Mr. Bush if he is confirmed today.

Mr. ELLSWORTH. I intend to work very closely with Mr. Bush. I have been in my area of responsibility, as far as intelligence is concerned, for not quite a month yet, and I have had good, close contact with Mr. Colby—had had before when I was one of the major consumers of intelligence—good, close contact with Mr. Colby.

Now, there are a number of programs—since this is a public hearing, I would rather not go into—where we do have regular meetings with the DCI and other members of the intelligence community to make certain budget and program decisions; I would characterize that relationship, as far as I am aware of it in this way: in the past it has been quite good, and I anticipate having a very close, friendly working relationship with Mr. Bush.

I have known Mr. Bush for 10, 15 years and have worked with him in a number of areas, and I expect to work with him closely in the future.

On your basic institutional question, through, while it would be difficult to pinpoint specific problem areas, there is an inherent kind of institutional conflict between the man who makes budget and program allocations among competing elements of the intelligence community being at the same time the head of one of those competing elements of the intelligence community.

I do not criticize any of the DCI's in the past, but that is potentially an area of conflict.

Senator PERCY. Could you supply for the record for us, Secretary Ellsworth, a description of the functions of the defense intelligence activities broken down by that portion that can be publicly released and that portion that we should know about as committee members on a classified basis?

Mr. ELLSWORTH. I would be glad to, Senator.

Senator PERCY. I would appreciate that very much indeed. Thank you.

[The information requested and subsequently supplied follows:]

The following is an extract from the Unclassified version of the Secretary of Defense Report to the Congress on the FY 1977 Budget, FY 1978 Authorization Request, and FY 1977-1981 Defense Programs.

President Ford acknowledged the importance he places upon the need for quality intelligence support to the policy-maker by nominating a second Deputy Secretary of Defense to supervise the Department's operations. This step was taken because the President is determined to assure that the United States has an intelligence capability that is effective and efficient and which he is confident is functioning within the law.

I have assigned the second Deputy Secretary of Defense responsibility for reviewing and making appropriate recommendations concerning:

- the utility of the Department's intelligence product to potential users;

- the protection of the Department's intelligence sources and methods;

- the efficiency of the Department's intelligence activities in terms of the value returned for dollars expended, with attention to any unnecessary duplication and to possible improvement in management arrangements; and

- the adequacy of existing management controls with respect to the Department's intelligence activities, including responsiveness to senior management and compliance with the law, Executive Branch regulations and policy guidance. In addition, he will represent the Department, as appropriate, on various intergovernmental groups and committees concerned with this subject matter.

1. The Defense Intelligence Role

In view of Congressional and public interest in the U.S. intelligence community, and because the Defense intelligence organizations are integral components of that community, a detailed discussion of the role played by Defense intelligence should be helpful.

The scope of the Defense intelligence role is broad. Not only must it serve multiple levels of intelligence consumers; it must also satisfy a wide variety of needs for each of those consumers. In general terms, these consumers can be grouped into four categories: national security policy-makers, weapons developers, defense planners, and the commanders of strategic and tactical combat forces.

The commanders of U.S. strategic and tactical combat forces require accurate and prompt intelligence specific to their scope of activity.

Since their function is to provide, as necessary, the prompt and efficient application of force, their requirements emphasize detailed, up-to-the-minute intelligence on actual and potential enemy activity. With this information, field commanders are able to plan realistically prior to an actual outbreak of hostilities, and to respond effectively to enemy activities during actual combat.

The intelligence requirements of U.S. defense planners -- encompassing the OJCS Joint Staff, senior Service officials, Director of Defense Research and Engineering and the Assistant Secretaries of Defense -- are broader in scope. Their needs are generated by a variety of responsibilities, ranging from the longer-term planning necessary for research and engineering proposals, to near and far-term planning for the mutual defense forces of our allies. They must know the relative capabilities, the pertinent daily activities, and, insofar as possible, the short- and long-range objectives of both hostile and allied nations.

Defense weapons developers require a great deal of precise information about the technical and operational performance and capabilities of foreign weapons systems. This is necessary to ensure that the weapons we design and procure will provide efficient and effective deterrence against potential threats.

The Defense intelligence requirements of U.S. national security decision-makers are especially complex. The need for timely, accurate intelligence is intrinsic in the day-to-day oversight of U.S. security interests, and it is of critical importance to the NSC and the President for effective crisis management. Not only must they have immediate knowledge and details of a specific crisis underway, they must also be made aware of the earliest warning signs of a potential crisis. This intelligence, therefore, must be comprehensive and its significance carefully analyzed for presentation to the decision-makers. We must rapidly gather, transmit, digest and present intelligence ranging from indications of shifts in foreign political attitudes to overt actions at all levels by a foreign nation.

National security decision-makers must also focus on such issues as strategic arms limitations, peace in the Middle East, and mutual and balanced force reductions in Europe. Each of these issues generates its own peculiar intelligence requirements. To protect our national security interests successfully, the decision-maker must have pertinent intelligence which not only accurately portrays and evaluates data concerning opposing forces, but is capable of detecting the hidden intentions of a negotiating partner, and can support activities such as SALT verification requirements.

2. Intelligence Collection

To support the varied requirements of these consumers, there are four basic information collection categories for intelligence: human resources, signals intercept, imagery, and open sources.

Human intelligence (HUMINT) collection is conducted on several levels, from open observation by a Defense Attache, to clandestine espionage, done with maximum security and concealment. Most HUMINT is in the overt category, and provides at very modest cost a valuable means of tracking foreign military developments and improvements in foreign technology.

Signals intelligence (SIGINT) collection exploits the technological advances which have been made in the electronics field. Sophisticated electronic equipments are an integral part of the strength of modern armed forces and societies. The communications and electronic emissions of specific nations can be monitored and information valuable to national policy-makers and essential to our military commanders can be gathered and assessed. Military commanders depend on SIGINT to provide them with time-sensitive warnings and information on the disposition, capabilities and intended activities of potentially hostile forces. SIGINT also has a direct impact on the U.S. force development and training process, particularly in the area of electronic warfare. Here, SIGINT can help our Defense planners to develop special training and tactics, and to design effective means of overcoming enemy electronic countermeasures.

As a source of information, imagery intelligence is usually highly reliable. Through imagery -- essentially photography -- valuable data across the entire intelligence spectrum can be gathered. For tactical purposes, imagery intelligence can range from providing order of battle and targeting information, to helping assess bomb damage during combat. Improvements are currently underway and the utility of imagery in combat situations will become increasingly significant.

Obtaining intelligence information from open sources -- TV, radio, newspapers and other publications -- is less esoteric than other methods, but it can provide a significant amount of useful information. Such collection, however, is time consuming and requires not only a great deal of patience and perseverance but also a high degree of competence in analyzing and putting together individual pieces of information.

3. Protection of Sources and Methods

Much has been said in recent months concerning the secrecy necessary in our intelligence operations, particularly regarding efforts to protect our intelligence sources and methods. The importance of protecting these sources cannot be emphasized too strongly. The loss of important information that would be experienced if U.S. sources were exposed is, of course, a serious concern to both the intelligence community and the intelligence consumers. Equally serious, however, and far less recognized, is the significant impact the loss of this information would have on the Defense budget. By basing defense planning on a reliable

assessment of the threat, we are able to ensure the sufficiency of our own forces at minimum costs. If we know where the enemy is putting his emphasis, we can make the most effective use of our limited Defense dollars. The less we know about the other side, the more we must spend to hedge against uncertainties.

4. The Defense Intelligence Organization

The Defense intelligence organization consists of three separate and distinct structures -- one for determining intelligence requirements, one for the operational mechanism, and one for program management -- which support the entire intelligence network. This separation of organizational structures has evolved as the result of our efforts to satisfy the various intelligence needs addressed earlier.

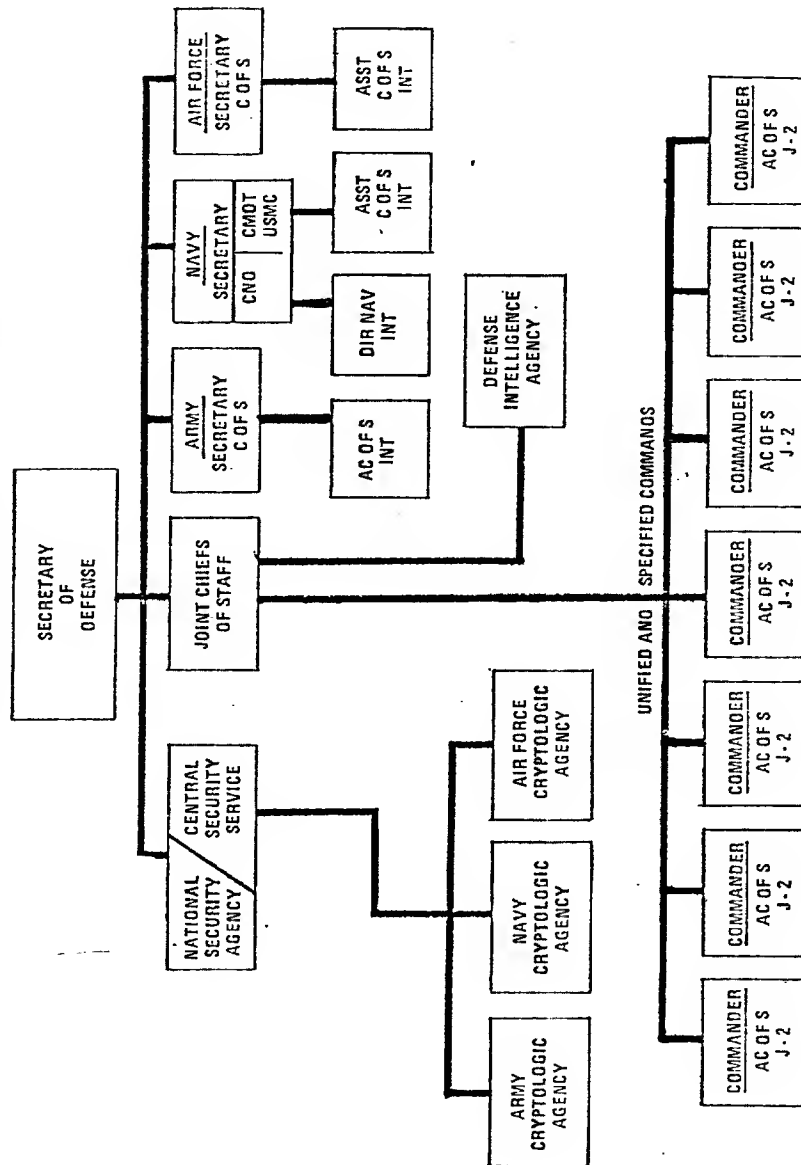
In determining requirements, Defense intelligence is structured to respond both to the national requirements established by the Director of Central Intelligence (DCI), with the advice of the United States Intelligence Board (USIB) and to the requirements of defense planners, weapons developers, and military commanders. A diagram of the operational structure is shown on the following page.

Defense intelligence program management, as well as all other intelligence activities of the Department, is carried out in close coordination with the national intelligence community. The Director of Central Intelligence is responsible for the overall coordination of this community, and has been provided an Intelligence Community Staff (ICS) to formulate and integrate the programs that will satisfy our necessarily diverse national intelligence requirements.

Within the Department of Defense, an Assistant Secretary for Intelligence has been serving as principal staff adviser for the management and allocation of Defense intelligence and monitoring intelligence-related resources. His office was established to ensure that the Defense Department's intelligence programs are both efficient in the use of resources and effective in responding to national and defense needs for intelligence support. Its responsibilities also extend to review of resources for our "intelligence-related" activities, which fall under the rubric of tactical intelligence, and to ensuring the efficient use of these resources as complemented by the intelligence community's national level programs.

The national-level intelligence programs of the Department of Defense have been guided and reviewed by the ASD(I) and are referred to collectively as the Consolidated Defense Intelligence Program (CDIP). This program, which is the Intelligence portion of Defense's major Program III (Intelligence and Security), does not include "intelligence-related" activities which

CHART VA-1
OPERATIONAL STRUCTURE OF DOD INTELLIGENCE



belong in the combat force and other major programs which they are designed to support. However, the ASD(I) has provided both management guidance and review in these areas. Chart VA-2 on the following page depicts the resource allocation structure as it has been organized.

5. The CDIP

The CDIP includes a number of major program areas which include the Consolidated Cryptologic Program (CCP) and the General Defense Intelligence Program (GDIP). The management of Signals Intelligence resources and activities in the CCP is carried out by the Director of NSA who acts as the program manager. In this role, he determines the resources required by NSA and the Service Cryptologic Agencies (SCAs) which collect signals intelligence in the field.

The General Defense Intelligence Program, which is made up of the Defense Intelligence Agency (DIA), Service intelligence organizations, and some of the intelligence activities of the Unified and Specified Commands, has been monitored by the ASD(I). The GDIP is the primary program for the management of requirements and coordination of collection activities, the analysis of collected intelligence data and its conversion into meaningful intelligence products and services for Department of Defense consumers. It is concerned with current intelligence, intelligence estimates, long-range studies, and the analysis of foreign scientific and technical progress. Included here are the Defense Attache System and special elements from each of the three Services that engage in collection of human intelligence.

The Service intelligence organizations, in addition to providing intelligence for the coordinated DIA intelligence product, are responsible for ensuring the collection and reporting of intelligence that concerns their individual military missions.

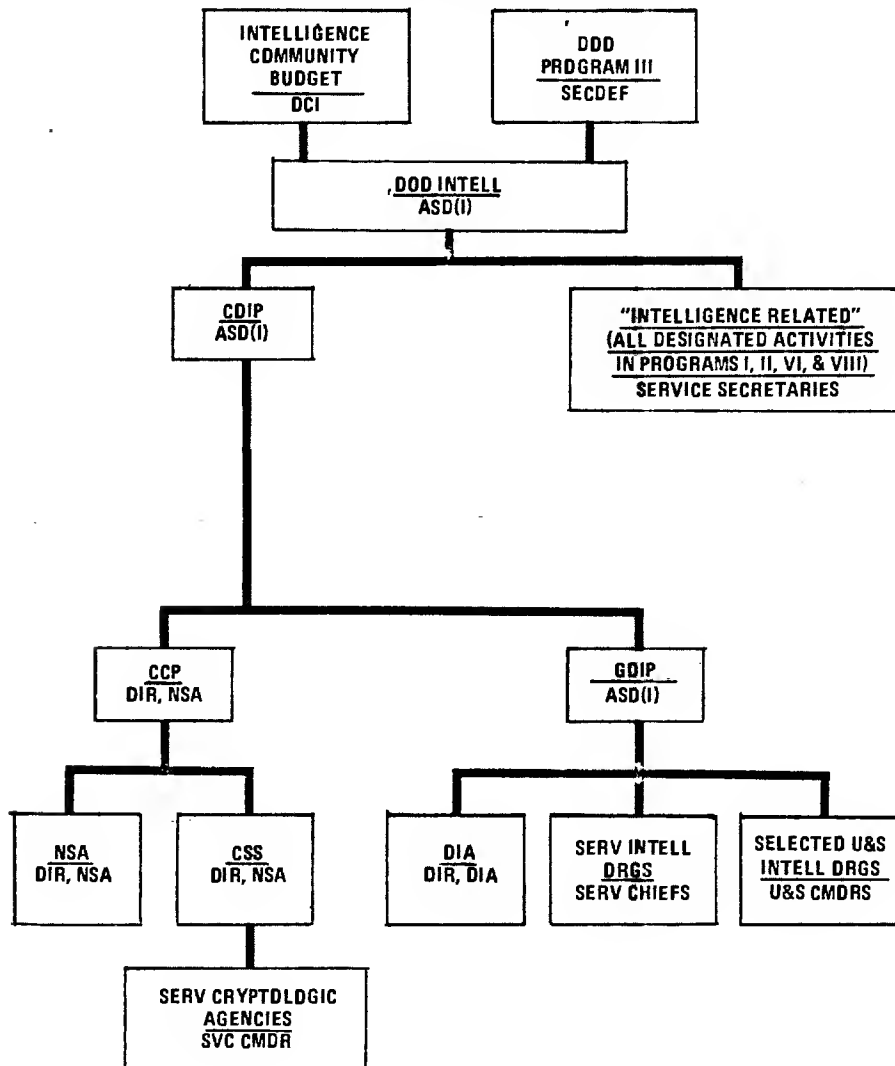
While ASD(I) has advised on overall intelligence and intelligence-related management and resource allocation, it does not produce intelligence. The Defense Intelligence Agency (DIA) is responsible to the JCS and the Secretary for integrating and producing coordinated Defense intelligence. This distinction between the roles of these two organizations is important to the understanding of how the business of Defense intelligence is conducted.

6. "Intelligence-related" Activities

There are activities in the Strategic Forces, General Purpose Forces, Training and Research and Development programs which we now designate as "intelligence-related" activities since they are designed to provide intelligence support to military forces. As mentioned earlier, we plan to

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RESOURCE ALLOCATION STRUCTURE



manage these activities in an intelligence frame-work as well as in their basic force structure program. The Deputy Secretary responsible for intelligence will maintain overall cognizance over these activities and review their development and resource allocation. However, R&D for these activities will remain under the cognizance of the DDR&E, who will work in close coordination with the ASD(I) to develop and maintain a balanced effort in this area.

There are seven functional categories and specific activities which are now labeled "intelligence-related" and others are being considered for inclusion as well. The seven categories are:

(1) Tactical Warning - Those operational assets, such as the Ballistic Missile Early Warning System (BMEWS) radars and the Early Warning satellites, intended to provide tactical warning (30 minutes or less) of strategic nuclear attack on the U.S. by bombers and land-based or submarine-launched missiles.

(2) Airborne Reconnaissance - Those military aircraft employed to search, detect, locate, categorize and/or target hostile or potentially hostile elements. Included here are the Air Force RF-4C and SR-71, Navy EP-3 and RA-5C, and the Army OV-10.

(3) Ocean Surveillance - Those activities responsive to operational commanders and designed to collect and report information on military movements on, over, and under the ocean. A major example is the Navy's Sound Surveillance Under Sea System (SOSUS).

(4) Data Relay Satellite - A system currently under development which relays strategic command and control communications and other important and perishable data.

(5) Headquarters/Other - Intelligence and intelligence-related facilities and staff personnel serving, and organizationally contained in, the Unified and Specified Commands and Service Component Commands. Their function is to provide intelligence support specifically to fulfill the requirements of the Commands to which they are assigned.

(6) SIGINT Direct Support - SIGINT units subordinate to tactical combat commanders. These units are designed to support combat forces in wartime, and are organized and equipped according to the size, composition, missions, and operational doctrine of the forces they support.

(7) Intelligence Training - Operation of those facilities with a primary mission of intelligence training and education in support of Defense intelligence requirements. These facilities qualify military and civilian personnel for occupational specialties in intelligence and enhance the intelligence career fields.

The activities in each of these categories satisfy specific requirements which tie them more explicitly to combat force readiness and weapons systems than to a consolidated intelligence function. Their proximity and responsiveness to the force structure they support, particularly in wartime, are more of a consideration in determining their location in our program structure than is their relationship to peacetime intelligence activities.

7. Intelligence Programs

Surprise Attack

Recent developments have added new dimensions to the problem of providing timely warning of surprise attack. The previous focus had been primarily on warning of surprise nuclear attack. We had reason to believe that any major attacks on NATO would be by reinforced Warsaw Pact forces and that both the preparations for reinforcement and the actual reinforcement would provide indications sufficiently early to prevent tactical surprise. However, analysis of Warsaw Pact exercises and other intelligence information acquired since the late 1960's indicates a changing threat to NATO forces, particularly in the European Central Region.

A number of trends over the past several years have emphasized a need to consider seriously the threat of a minimum-warning attack against NATO. Central to this threat is a growing Soviet emphasis in doctrine, procurement, and training exercises on the development of a capability to attack without a prior major reinforcement. Given that our current systems are focused on indications of reinforcement and increased readiness, this could result in a significant decrease in the warning of an impending attack.

In addition, the NATO concept of flexible response and control of escalation requires even more detailed and timely intelligence support to decision-makers than would a policy of massive retaliation. If our growing capability to collect information can be focused and the results processed and correlated in time, it can give the military or political decision-maker more opportunities to defuse and control a developing crisis.

A significant part of our effort to respond to this changing threat to NATO and the increased information flow is the upgrading of the National Military Intelligence Center (NMIC). Improvements include collocation with the National Military Command Center, installation of improved communications and automatic data processing equipment, and acquisition of necessary software to utilize better the capabilities of near real-time intelligence collection systems. These improvements should increase the probability of acquiring and recognizing the indications of potential military actions as well as providing more effective support for crisis management.

Support to Operational Commanders

Operational commanders require direct intelligence support to carry out their mission effectively. In the past, both tactical and national intelligence systems have been deficient in making optimum use of the resources in each other's systems. We are therefore instituting specific provisions which will afford operational commanders a greater utilization of our national intelligence systems in emergency and combat situations and ensure maximum support to national level decision-makers from tactical intelligence-related systems. One ongoing project to use tactical resources to aid national decision-makers is the Ocean Surveillance Information System (OSIS). Currently, this system specifically supports fleet commanders-in-chief and numbered fleet commanders with processed, all-source ocean surveillance information on a worldwide basis.

Intelligence Support

Military intelligence in support of defense and national planning traditionally focused on analyzing the balance of military power between ourselves, the Soviet Union, and the People's Republic of China. Emphasis on these balances will continue. We are, however, seeking to broaden our capabilities.

We continue to face increasing military threats from abroad. But in forming an accurate estimate of our rivals, we must also take into consideration the differing problems of morale, leadership, internal politics, and financial structure that they confront. Initiatives to improve our analysis of other countries are also underway and new methods of measuring the impact on behavior of such factors as foreign training and technology transfers are being sought.

As foreign military forces employ more highly developed technology, develop new doctrines, and change their deployments, we must ensure that all of our staffs and planners are working from the same set of information. Machine-aided translation and processing of raw data are minimum essential requirements.

Resource Considerations

Both fiscal and manpower constraints make it imperative for intelligence program planners to achieve the greatest possible economy of operation. We have already effected significant manpower reductions, and further reductions seem unavoidable. Cutbacks are being concentrated in management and overhead personnel, while manpower required for new tasks elsewhere in the intelligence structure is being obtained through reallocation from these areas. Since 1971, intelligence manpower has been reduced on the order of 30 percent.

Even with these severe reductions, we are striving to counter further increases in manpower costs by increasing our rate of investment in advanced technology. The production of intelligence is a complex function requiring the processing, assimilation, and fusion of myriads of pieces of information from scores of sources. To assist in this process, intelligence producers use automated tools whenever possible. The Intelligence Data Handling System (IDHS) is the umbrella under which all expenditures for these vital services are maintained. This increased investment will provide a better assessment and analysis of intelligence data for decision makers, and show savings in manpower and equipment costs as old equipment is phased out and consolidated, and manpower-intensive operations are automated.

Last year the Appropriations Committees held hearings on the national intelligence budget. I regret the reductions that were made. These reductions occurred at a time when intelligence is exceedingly important to our national security.

Professionalism

We recognize that professional analysis continues to be essential to the effectiveness of our intelligence operations. To ensure this quality, we are concentrating on improving the caliber of personnel and reforming evaluation procedures to make sure the experts are heard clearly and unambiguously by those who rely on their intelligence judgments.

Improved recruiting, training, executive development, and "track record" measurement should strengthen our personnel base. In addition, we have expanded efforts to vary assignments and to provide sabbaticals in the intelligence community. In addition, specific measures are being proposed to improve the overall efficiency and productivity of intelligence personnel. One of these is a request for Congressional legislation which would permit the "selecting out" of individuals who fail to meet high standards. Another proposal under consideration would include the professional intelligence discipline as an exception to supergrade quota authorization under 5108 (C) (5), U.S.C.. These measures would enable the community to maintain a staff whose professional qualifications keep pace with the changing technology employed in intelligence collection, processing and production.

We believe that evaluation of intelligence will improve as we ensure direct access by analysts to senior intelligence officials and to policy planning staffs, and as we allow internal intelligence community dissent to rise to the policy-making level. While intelligence must remain objective, its personnel need not remain isolated.

Enhanced professionalism will also result in increased stature for the intelligence community. Efforts are being undertaken to ensure the provision of pertinent intelligence information to interested members of Congress, and a corresponding effort is being made to restrain the over-classification of data.

Chairman RIBICOFF. Senator Glenn?

Senator GLENN. Thank you, Mr. Chairman.

Mr. Ellsworth, I would like to follow up a little bit on this IG suggestion of yours.

Our problem in oversight here, it seems to me, has not been in the regular intelligence-gathering activities. Everybody is in full support of that. It has been with the covert activities, or the things that would have an impact on the world, such as assassination planning, things like that that have gone on that no one knew anything about until they came out later.

You point out here with your idea of the Inspector General, that this would be in the area of foreign intelligence collection and that it would be in that area only, I presume. I would question whether that was necessary.

Do we not already have adequate oversight in the collection functions, not in the covert activities, which you very carefully stayed away from?

Mr. ELLSWORTH. Senator Glenn, first of all, my responsibilities are limited to DOD foreign intelligence and counterintelligence as far as intelligence is concerned. DOD runs no covert operations. I hardly wanted to come up here and be in the position of suggesting an inspector general over that area.

But having said that, there have been, as I indicated before, even with regard to foreign intelligence collection programs, that we in the Defense Department have responsibility for, some revelations of indiscretions and even illegalities during this past period of revelations.

I think that in order to assist the restoration of public confidence and support for intelligence that it would be advisable, if the executive branch and the Congress in their collective wisdom so decide, to establish an inspector-general function along the lines that I have suggested, that is the Inspector General would have complete responsibility across the whole spectrum of intelligence operations of all kinds.

Senator GLENN. Are there not any military covert operations going on?

Mr. ELLSWORTH. None that I know of, Senator, and I think that I would know.

Senator GLENN. That gets to the heart of the problem, does it not?

Mr. ELLSWORTH. I think that I would know, but I cannot say absolutely.

Senator GLENN. A couple of weeks ago, I probably would have agreed with you, if you made that statement, that you probably knew everything about it. Then we had Secretary of State Rusk testify, as I said awhile ago, that he was unaware of things going on. He has found out since his tenure that there were things going on of which he was not aware.

The reason for asking that question was not just to put you on the spot, but if we went this IG route, should that cover not only intelligence gathering, but should that man then have absolute authority to go down and determine any covert activities going on in the military or foreign areas?

Mr. ELLSWORTH. Absolutely.

Senator GLENN. You would expand it, then, in your recommendation?

Mr. ELLSWORTH. Absolutely.

Senator GLENN. This advance notice requirement that you are very concerned about—and, I think, properly so—should that cover both covert and overt activities?

Mr. ELLSWORTH. My point was—

Senator GLENN. Should you separate those two, where there is advance notice requirement given, I do not think in regular intelligence gathering activities, for instance—I am not trying to put words in your mouth—where there would be regular intelligence-gathering activities, I do not think it was the intent of the committee to try to get advance approval for the fact that we are going to monitor a broadcast from someplace.

Mr. ELLSWORTH. I was not prepared to testify on whether there should be advance notice in regard to covert operations, but I think I did, in response to a question by the chairman. I was attracted by Ambassador Helms' testimony a few moments ago.

As a practical matter, in the real world, if a covert operation is contemplated, it would certainly be well for the executive branch to come up and sit down under well-understood procedures and confer and consult with the Congress, or with a certain segment or a portion of the Congress in which the rest of the organization would have confidence.

If the indications were that it would not carry, all right. But, on the other hand, once there was agreement by a responsibly designated portion of the Congress and the operation started, there has to be some way of assuring that that agreement and that support will carry through and not wash away a little later on.

That is the problem that I think has to be resolved and worked out; I am not really prepared to go into further detail at this time.

Senator GLENN. You specified only foreign intelligence collection would come under the Inspector General.

Do you think that realistically you can separate it?

Mr. ELLSWORTH. Here again, my responsibility is only to handle foreign intelligence operations and counterintelligence, not covert action.

Senator GLENN. What access to information would this IG have that is not now given or that CIA does not have the authority to collect, just as an IG would have?

Mr. ELLSWORTH. I am not sure that he would have any greater access than now exists on the part of a variety of people, but it would be a central point. He would have comprehensive access, and being set up as he was, according to my concept, with that autonomy and that independence, both in the eyes of the Congress and in the eyes of the public and in the eyes of the executive branch itself, I think he would find the community much more responsive to an inspector generalship than is the use now with Inspectors General integrally established inside the very organizations that they are supposed to be inspecting.

Senator GLENN. What would his function be if he found something very unsavory to him? If it were wrong, that he was not given the proper information, what recourse would he have at that point?

Mr. ELLSWORTH. Well, Senator, one can speculate that he would have a number of options open to him.

Reference has already been made here this morning to the fact that the atmosphere has changed, and I would think that his existence, that his position, along with the atmosphere that exists would act as a tremendous deterrent for the foreseeable future to peccadillos that did not meet with his favor.

Senator GLENN. Let us say the peccadillos are continuing.

Mr. ELLSWORTH. He would have to be equipped with ways to put a stop to it.

Senator GLENN. Do you have any idea what those methods would be?

Mr. ELLSWORTH. I have not worked those out.

Senator GLENN. Do you have any feelings on a joint as opposed to a single committee which we have discussed. I know the problems of secrecy as the committees proliferate.

Do you have any strong feelings on that one way or the other?

If we establish a committee, do you feel it should be an intelligence oversight committee solely on the Senate side with the House not having one, or should it be a joint committee with both ends of the Capitol being involved, or should there be separate committees at both ends? What would your advice be in that area?

Mr. ELLSWORTH. I do not have answers to those questions. I do not have strong feelings about them.

Senator GLENN. Unfortunately, we do not either, at his point.

Thank you, Mr. Chairman.

Chairman RIBICOFF. Senator Weicker?

Senator WEICKER. Thank you, Mr. Chairman.

Before I proceed to the questioning of Secretary Ellsworth, is it my understanding that Dr. Kissinger is not going to appear before the committee tomorrow as scheduled?

Chairman RIBICOFF. Yes. Secretary Kissinger called, and he is deeply involved with negotiations now taking place with the Prime Minister of Israel on Wednesday. He has asked whether he could appear on the 5th of February, and the present plans are to have Secretary Kissinger appear on the 5th of February, and we will close with the Attorney General, Mr. Levi, on the 6th of February.

Senator WEICKER. Thank you very much, Mr. Chairman.

Secretary Ellsworth, I would like to talk about leaks and secrecy. I notice on page 2 of your testimony, you say, "The other problem concerns the danger to secrecy which inevitably occur when one or more people who know about and talk about intelligence activities."

Then, again, on page 6 of your testimony, you make the statement that:

Experience over the past year has shown that this would not necessarily be the case. Both the Senate and the House Select Committees have conceded that despite formalized security control procedures, there are few effective brakes on an individual Senator or House member from disclosing what he alone decides is in the "public interest." The practical effect is that any single member of Congress can prevent or bring to a grinding halt an extremely sensitive ongoing operation simply by issuing a public statement.

The reason why I wanted to address myself to the subject is I could not help but see in the media and read in the media, the press conference of Director Colby, the comments from the White House, et cetera.

My question specifically is this. I would like to know specifically what in the past year of investigation has leaked that has been of a national security interest?

Let me be specific. If you mention the incursion into Angola, I will argue with you, or the payoff to Italian politicians, or the policy of assassination, or the policy of overthrow as exemplified as to the Government of Chile. I would like to know what activity that we would all genuinely consider as national security has been leaked? By way of my own comment, I have seen a lot of questionable activity that has been brought to the attention of the American people. I would like to know what has been leaked that very definitely affects national security?

Mr. ELLSWORTH. I think the items in the press that you are referring to, Mr. Colby's statements and other items in the press, are in reference to the report of the House Select Committee on Intelligence. In this regard, two points are made. First, that a substantial amount of classified material was provided to the House Select Committee with the understanding that it would not be released to the public unless, or until, the proposed release of classified information had been subjected to a consultation with the President.

The point was made by Mr. Colby in yesterday's and today's press that those consultations had not taken place prior to the proposed release of substantial amounts of classified information in the House select committee's report—which I have not seen; I have not read this House select committee's report so I cannot address myself specifically to the points which fall under that comment.

Second, the point was made, both by Mr. Colby and elsewhere in the press today, that quite apart from any agreement, there are a number of disclosures in that report that probably will, or that will, seriously and irreparably damage the sources and methods of intelligence collection. Again, what the specific points are that they refer to in that committee report I do not know, but we would welcome the opportunity from our standpoint in the Department of Defense, to go through that report and provide to you, Senator, a list of specifications, if there are any, of the ways in which the publication of various materials in that report have and could have damaged our sources and methods of collection.

Senator WEICKER. The reason why we are here, Mr. Secretary, is not leaks. The reason we are here is the excessive secrecy which has been used to cloak questionable activities and which has been going on for years.

I find the sensitivity that exists in this town extraordinary. When for a few months the American people are given a glimpse of those questionable activities, how quickly parts of the Government start to yell and scream for the pendulum to go the other way, and once again impose the secrecy which brought about the improper activities in the first place.

Let me ask you some specific questions. Do you feel that the American people have a right to decide whether or not we are going to engage in any policy, never mind the specifics, whether or not we are going to engage in the policy of assassination? Do they have a right to participate in that decision?

Mr. ELLSWORTH. Senator, I think the American people have a virtually unlimited right to participate in the discussion and debate—and should—and the Congress, on their behalf, must consider the assumptions underlying policy and the development of policy and its specifics. But when it comes to public discussion of specific country operations, that is another matter. I do not know anymore about any assassination plans than what I read in the newspapers, just as any concerned citizen reading the newspapers. However, for my part, I would be opposed either as a citizen or as a Government official, which I am from time to time, to any kind of a policy that involved operations leading to the assassination of anyone.

Senator WEICKER. At least you should have an opportunity to express yourself, right?

Mr. ELLSWORTH. That is correct.

But when it comes to public discussion about the sources, technical sources, and methods of intelligence collection, then I think—and I think that probably most of the American people feel this way—that is not a question for public discussion.

Senator WEICKER. I could not agree more. I made that point earlier.

The fact is, so far, I have not seen that. Yes, I saw some French publication come up with its own list of CIA agents. That was not a House or Senate committee. I have not seen that type of information come forth from the Congress in the way of specifics of names or sources, et cetera. I agree with you 100 percent, we have no business getting into that. But that is not what has been leaked.

Do you feel that the American people have a right to determine whether or not we should engage in an Angolan operation?

Mr. ELLSWORTH. Yes.

Senator WEICKER. Certainly they would not have if it had not been leaked.

Mr. ELLSWORTH. I myself have very little difficulty justifying the participation of the U.S. Government in the operation in Angola in the way that we did. There would be room for debate and difference, but my own view of that is that that was a correct operation from a policy point of view for the United States to be engaged in.

That is to say, the United States attempt to assist those elements on the local scene in Angola that were trying to resist the imposition of Soviet and Cuban policy directions on the evolution of their government and their country was not incorrect.

Senator WEICKER. I am not arguing that point, Mr. Secretary. Do you think it is valid to debate that point?

Mr. ELLSWORTH. I do.

Senator WEICKER. Or as Mr. McCone said yesterday, it should be decided by two or three Senators—which is in effect what happened—however, I believe it should be a matter of policy that this kind of activity be known by the American people, is that correct, regardless of what point of view you take?

Mr. ELLSWORTH. I am not directing myself precisely as to whether that operation should be known. I am saying that there is nothing wrong with the American people debating and discussing both the assumptions underlying a policy of that kind and the policy itself.

Senator WEICKER. I am not trying to be critical of you personally. I think it is a fine statement. I think your answers are highly intelli-

gent and sensitive. It may add to the problems posed in our country today. I am not addressing myself to you personally. I am addressing myself to the rationale and sensitivity that seems to be displayed by the administration as to the information getting out to the American people.

I do not know one member of this committee or one Member of the Congress that feels the details of this operation, whether it is the FBI, CIA or whatever law enforcement or intelligence agency it is, ought to be a matter of public record. Obviously, it should not.

As to the policies of these agencies, there is something that I feel very definitely belongs in the hands of the American people. Whether it is the Angolan operation, Italian politics or assassination in Chile, it is American money, it is American lives that are going to have to pay the coinage involving those sorts of operations. I think they have a right to decide for themselves what they want to do.

That is the only point I am trying to make to you here. That we confuse what appeared in the foreign press and was someone else's handiwork when what the Congress has done in effect has been to try to get a handle on certain policies that we should have had a handle on a long time ago.

Mr. ELLSWORTH. Permit me to examine that report and analyze it from the standpoint of damage to sources and methods and submit that analysis to you.

Senator WEICKER. Fair enough. I will go along with you 100 percent on the sources and identification of individuals.

Thank you, Mr. Chairman.

Chairman RIBICOFF. Senator Nunn?

Senator NUNN. Mr. Chairman, I really have one question following Senator Weicker's dialog today and yesterday. I am puzzled about the kind of legislation proposed. I have not read any that would in effect subject our decisions like Angola or Italy or any other to a national plebiscite.

I have not seen any legislation that would carry out that kind of suggestion.

Senator WEICKER. I would like you as a cosponsor to Senator Baker's and my bill.

Senator NUNN. Is that what it's going to do? Are we going to have a national debate on every foreign policy decision?

I have not read the bill in that way.

I am puzzled about where we are leading with this kind of dialog. Maybe, Mr. Ellsworth, I should direct a question to you.

Is there any kind of proposed legislation that you have seen that would do this? You commented on legislation here that would subject any covert activities to national debate. I know the committee has got to consider it. I do not know where the dialogs lead to.

Did you comment on that in your statement?

Mr. ELLSWORTH. No; not really.

We are talking about three different categories of activities. First of all, in my statement I said that it was undesirable for the Department of Defense to be subjected to a detailed advance notification requirement. This has been proposed in some draft legislation.

In regard to our intelligence activities, I made the point that what we regard as intelligence is the collection, analysis, and dissemination

of information; this is something that is entirely different and needs to be clearly distinguished from covert operations, and that we do not have responsibility for any covert operations.

Then the question came up, what about something like Angola? Would you like to have that excluded from being subjected to an advance notification requirement?

That is not really within my responsibility, but I went ahead and answered the question. I said, well, as a practical matter, I thought it would be desirable that if any such operations were contemplated that there should be consultation with the Congress in advance, and if indications were that it would not be supported down the line, it would not be initiated.

On the other hand, if the indication was, that Congress would support an operation, then everybody had to understand that there would be solid, reliable support down the line.

Senator NUNN. That would be through a process that the Congress would establish with a proper oversight committee and a dialog between the executive branch and the legislative branch that would not take place in a public forum or on national television.

Mr. ELLSWORTH. That is correct.

The third area under discussion in my colloquy with Senator Weicker, was my express belief that there should be no limit on the public discussion in this country of the assumptions that underlie policy, particularly foreign policy, but I did not state that there should be any public discussion of secret sources and methods of intelligence collection, so that is where we are in those three categories. I am really a little out of my jurisdiction when I talk about them.

Senator NUNN. That clarifies it. I probably came in on the tail-end of the discussion.

Regarding paramilitary kinds of operations, do you think that in the present atmosphere in this country it is possible to carry out any large-scale covert or paramilitary operations by the United States of America without a discussion in the public about it or without the approval of the American people?

Mr. ELLSWORTH. Then it is not covert.

Senator NUNN. That is right.

Do you think that we can have a paramilitary operation of a covert nature in this atmosphere?

Mr. ELLSWORTH. Not in the present atmosphere.

Senator NUNN. Mr. Chairman, there are a few questions that may have been already asked. I will yield the balance of my time.

Chairman RIBICOFF. Senator Brock?

Senator Brock. Thank you, Mr. Chairman.

I am not sure whether I have any questions or not. I am much distressed by the conversation—I think the thing that bothers me in all of these hearings, we tend to mix apples and oranges. I do not think that people know what in the dickens they are talking about half the time, particularly in this area.

I am a little bit disgusted with some actions on the House side, particularly where leaks have occurred either from the committee or the staff—I do not know where they came from, to be honest with you; I know they have been leaked—that some individual placed himself above the law and above the executive branch and above his colleagues

in determining what is and what is not in the national interest, and I do not think that individual has that right.

With the purpose of this hearing, I think we have to set up a procedure by which the Congress can make a determination as to the rights and wrongs of a particular policy and the responsibilities that go with the implementation of that policy. It is the Executive's policy; it is not the Congress' policy. If we want to change the Constitution, we had better start there.

For the moment, at least, the Constitution ascribes that responsibility to the Executive. It is our responsibility to oversee the implementation of that authority, to see that it is within the context of the Constitution and the will of the American people.

I do not think it is a question of whether or not Angola should or should not be debated in public. It is whether or not we should have a process by which we determine what can be debated in public and what can not.

I think that is what you are seeking to support.

I am much distressed by the whole tenor of this process in the past year. I do not quite know how to bring this back to square with the sense of responsibility that goes beyond the hunger for press. I think it is essential that this committee have the best advice we can to achieve an oversight that is responsible, because the kind of oversight we have is not, in my opinion.

If you would like to comment on that nonquestion, I would be delighted to have your thoughts.

Mr. ELLSWORTH. You know, Senator, you have said a number of things that a Member of Congress can say and the rest of us cannot say. I guess I will not comment on your comment, if I may be excused from doing so.

Senator BROCK. I would be interested to know if you have great disagreement with me on any significant point.

Mr. ELLSWORTH. We all have a problem. If I may say so, I think that we have two problems with regard to intelligence.

One is that we need a measure of oversight in order to limit and prevent the kinds of abuses there have been, and there have been some indiscretions and illegalities.

Senator BROCK. And it clearly has been the Congress' inability to oversee what has brought that about.

Mr. ELLSWORTH. And we have a problem with the intelligence community that has not been touched on. The general impression regarding our intelligence functions in this Nation is that the quality of information collection dissemination, and analysis are pretty good.

Speaking personally, my impression is rather the contrary. I think the indiscretions and illegalities, quite apart from the issue of differing opinions on the assumptions underlying policy, have been exposed and have been brought under control. I do not think at the present time they constitute an ongoing problem.

I think the general problem of information quality, particularly with respect to our intelligence analysis, is really something that needs a great deal of thought and attention; speaking for the Department of Defense, we are giving this area a great deal of attention and energy.

On behalf of all of us, I hope we can greatly improve our understanding and our ability to analyze the information that we collect. We have wonderful collection capabilities, but we do not have as high a quality in our ability to analyze and understand what it is we have.

Senator Brock. I think that is true of all of us.

I might just ask you to comment specifically on the question that has been raised several times here with regard to the proliferation of committees.

You mentioned it briefly in your statement. You might want to comment specifically on the proposal that the oversight committee be, number one, a joint committee and number two, a committee that has both authorization and appropriation prerogatives.

You have been in the Congress; you know the process. I would appreciate your view as to whether or not that is a practical way of going about it.

The reason I ask the question is that we have a particularly difficult problem with defense intelligence that is distinct from the Defense Intelligence Agency or the intelligence activities of the CIA. It seems to me that it is going to be very difficult for us to describe the parameters of oversight for a committee if we take the jurisdiction from Armed Services, for example, of DIA oversight which do not then, by the very exercise of our oversight in one committee, does not remove from the other committee some knowledge that it needs to view the defense budget in its total context.

I am having great difficulty in trying to describe the jurisdictional question.

Mr. ELLSWORTH. I understand your questions, and I have a couple of comments.

No. 1, the Congress can create one strong oversight committee, or two. I don't really feel strongly whether there should be a joint committee or whether there should be a Senate committee and a House committee. I do not want to comment on that; I do not have strong feelings about it, but we would welcome one strong committee or two strong committees that the rest of the Congress would trust to exercise oversight. But as far as authorization or appropriation jurisdiction is concerned, we would have real problems dealing with the authorization committees and the appropriations committees we now deal with, plus dealing with one or two additional committees.

We have completely agreed with what you said about the fine grain detail difficulties of breaking out intelligence budget program functions. We must not lose sight of the fact that the greatest consumers in terms of items of intelligence in the entire Government are the military, whether they be tactical commanders or component commanders or unified or specified commanders or the Joint Chiefs or the Secretary of Defense or the research and development people.

A good deal of the intelligence collection and the intelligence consumption is integral—as a support function—to other jobs that are being done by Defense Department personnel.

It is extremely difficult to break this out. It can be done. For the Appropriations Committees this year, as I indicated in my testimony, we are making an effort to break it out to the extent necessary. For

purposes of an oversight committee we have not been able to figure out how it could be done in a foolproof manner.

We, of course, will respond to whatever the Congress decides in its wisdom ought to be done, but it will be extremely difficult to break out—and to draw a sharp dividing line between—so-called national intelligence and so-called tactical intelligence. You can define them arbitrarily but functionally it is impossible to separate them literally.

Senator BROCK. The House would solve your problem. They would eliminate the defense intelligence function.

Senator NUNN [presiding]. Senator Percy?

Senator PERCY. I would like to take a minute to comment on Senator Weicker's debate that he has orbited here.

I think in the bicentennial year it is particularly appropriate that he raise this issue and the broad philosophical question. He has helped us define what our role and responsibility is in the Government.

I take a somewhat different position. I think we do have a right to know in many, many areas, but we also, in a democratic republic, have the right to secrecy.

We started out that way.

If, in Philadelphia, at the Constitutional Convention, we had had television cameras pointing down on that conference and daily reporting of what went on, I doubt we would have ever created a Union.

They imposed a very strict secrecy pledge, which was universally held, and that held together that convention and held together that Union. I doubt that the Washington Post would ever have solved its labor differences if they had to negotiate in public. I would doubt that any labor-management problem could ever be settled if it could not somehow be done with people speaking directly to each other.

I wonder how different heads of state operate, if they walk into the White House and feel what they are saying in confidence to the President of the United States about a third party, a third power, is being tape recorded and might subsequently be released.

It is the difference between a Senator or a Congressman being told what is being asked by a reporter is background and off the record and not for attribution or for public consumption. There is a vast difference between what that legislator says.

I think that we have to constantly remind ourselves that we are a representative form of Government and certain duties and responsibilities have been delegated to the President by election and to Members of Congress by election. We do not necessarily have to make everything public. As I talk to people, they do not really feel that many of these things need to be public.

I have assured myself that we have caused irreputable damage in our intelligence gathering by publicity. I cannot imagine that the intelligence services of Great Britain, Germany, France, and other sophisticated countries, formed long before we were and which save us invaluable time, effort, and money by revealing to us the confidences they have gained at great cost to themselves, are happy about publicity. Maybe danger can now flow as the result of the feeling that maybe their sources may be publicly revealed and cause someone to be shot or dry up information sources.

That is not a question, Senator Weicker, other than to say the question you raise is a very profound one, and I think it is going to help

us. You served a great public interest in raising the issue as to what our role and responsibility is.

I have just a few questions.

In your testimony this morning—are you testifying on behalf of the National Security Agency as well as other components of DOD? I think the Agency, the National Security Agency, must have an input into these hearings. Part of your testimony was as an individual.

Mr. ELLSWORTH. The only time I testified as an individual, which I did with the permission of the White House but not necessarily the support of the White House, was with respect to that one unique idea about the intelligence communitywide Inspector General. The rest was on behalf of all defense intelligence elements, including the National Security Agency.

Senator PERCY. Do you think we should separate covert activities from intelligence gathering activities in the CIA, or are they so bound up together that they must be carried on by the same Agency?

Mr. ELLSWORTH. That is not a question to which I am really prepared to respond, simply because I have not thought it through.

Senator PERCY. If, at any time, you would like to communicate your views on that, we would value your judgment in a private communication.

Does NSA file its output through DOD and does it receive its instructions through DOD?

Mr. ELLSWORTH. The NSA is a national agency which is assigned to the Secretary of Defense as executive agent to the President for management purposes. The NSA is tasked, as are most of the other intelligence collecting agencies that have wider scopes than just the military, by the DCI as chairman of the USIB—U.S. Intelligence Board. The USIB advises the DCI on taskings and priorities for the various agencies, including NSA.

It is from DCI that NSA receives its taskings and priorities.

Senator PERCY. Does NSA get requests for information from other agencies and not just through DOD?

Mr. ELLSWORTH. Oh, yes, the USIB funnels in requests from the whole spectrum of consumers.

Senator PERCY. Would you want to comment on how these requests are coordinated?

Mr. ELLSWORTH. They are coordinated at the USIB meeting. The USIB is a Board comprised of Agency representatives from the various elements of the intelligence community that meets under the leadership, chairmanship, of the DCI. It is at USIB and USIB subcommittee meetings that the taskings and priorities are developed and coordinated.

Senator PERCY. I assume, just for purposes of clarification, that when former Secretary Clifford testified that he thought that Congress should not have a veto operation over major intelligence covert activities, but they should have prior notice of any major activities, that you disagree with that testimony.

Mr. ELLSWORTH. That they should not have a veto?

Senator PERCY. They should not be able to veto, but they should have prior notice of any major intelligence undertaking.

Mr. ELLSWORTH. Oh, yes, I disagree with that. From our standpoint it would be undesirable as a practical matter as well as, I think, a matter of law. It would be unfortunate for us to have to submit all of

our plans for intelligence activities, or even all of our major intelligence activities, to the Congress in any form for advance notification.

I would hope that the committee would not look with favor on that idea. As I mentioned previously, I am not talking about covert operations and actions, I am talking about the kinds of intelligence collection, analysis, and dissemination that we regularly do.

Senator PERCY. Do you think it is possible for a major intelligence undertaking by the Defense Department to be gotten underway and put into action without your knowledge?

Mr. ELLSWORTH. No.

Senator PERCY. Lastly, Mr. Katzenbach suggested last week that all orders for intelligence requests be written down for the file. He felt that by committing an order to writing and by describing in writing what is to be undertaken and the objective of that undertaking, even though it would be put under lock and key, the very fact that it existed and it had to be done prior to the activity being undertaken would act as a safeguard against activities that might be carried on if just done verbally without any written communication whatsoever.

Do you concur with that?

Mr. ELLSWORTH. For the most part, however, there are times when you do not have time—when time does not permit writing down orders.

The way in which all of our operational agencies conduct themselves is via the paper audit trail. Sometimes there is too much of it, sometimes it gets to be a paper chase.

By and large, except where there are immediate tactical considerations—as there have been in recent years—where time does not permit, there is a prior written request specifying in detail what is wanted and why. Otherwise, the operating agency would not be clear about precisely what it is to do.

Senator PERCY. I thank you very much indeed. If I have any time left, I yield it to Senator Weicker to respond in any way he wants, if I have in any way misinterpreted the question he is putting to us.

Senator NUNN. Senator Glenn?

Senator GLENN. Thank you, Mr. Chairman.

Mr. Ellsworth, we are all concerned with having the best intelligence activity that we can. That is the goal for the future as far as making future decisions, not only policy decisions, but military, tactical decisions too. We are concerned with that.

We have quite a proliferation of committees and groups and different agencies that are responsible in this area all working together.

What suggestions would you make if you had to wind up a one-two-three-four or half a dozen things to do? What specifically would you recommend to improve our intelligence collection and the evaluating system now?

Mr. ELLSWORTH. I have a number of things in mind. Number one, I would upgrade the quality of the personnel that are in the DIA by relieving the DIA of the necessity of handling personnel in general accordance with Civil Service Commission regulations. We have a real problem in the DIA with regard to that matter.

That is not a stricture that applies to the CIA, for example. They are relatively free of those limitations. DIA is not. We would like to be free of them, or freer than we are now, and perhaps that is the principal suggestion that I have evolved so far.

As I said before, I have been in this area of responsibility now for about 4 weeks. I have not really had the time to think through, Senator Glenn, all the things that I want to do.

We do have six or eight task forces under my direction working on the development of recommendations and options which would improve intelligence activities in the Department of Defense and in the national intelligence agencies for which we have executive responsibility. I am not prepared yet to go into detail on any recommendations. I will in a short period of time.

Senator GLENN. Perhaps the question is too broad.

Seriously, while we are considering our whole committee structure and oversight function, it seems to me that it is a logical time to assume whether our intelligence operation is really lined up with the proper authorities and proper agencies, or should there be a combining or whole new alinement or a new intelligence IG as was suggested?

All of these things, of course, would change all of these alinements. I would welcome any suggestions you might have, after you have been on the job and feel that you can see some things you do not like. I think we would all like to know it, because we have quite a proliferation of agencies now and riding herd on all of these different groups and making sure that whatever activities they get into are something with which the American people and the Congress agree is quite a big job.

I am not just concerned with that negative aspect, riding herd on people. I am concerned that we have the best and finest intelligence-gathering activity in the world. Our future may be determined by that type of information.

I am happy to hear people say that we have the best intelligence-gathering apparatus in the world now, but is it adequate? I do not know.

I would like to make it even better than it is now, whatever those steps might be.

I would solicit your opinion on what those steps might be on making more effective gathering of operations.

Mr. ELLSWORTH. Thank you, Senator.

When I get a little further along, I will certainly be coming up to Capitol Hill explaining our ideas to the authorization committees and the appropriations committees. At that time, I would be glad to make myself available to the Government Operations Committee.

Senator GLENN. Thank you.

Senator NUNN. Mr. Ellsworth, I have one question.

In your dialog with Senator Percy, you stated—and in your statement you made it plain—you are not in favor of advance notice of covert activities.

I understand in your dialog with Senator Percy that you distinguished between covert intelligence-gathering activities and covert political action kinds of activities.

Is that a distinction that can be codified?

Mr. ELLSWORTH. Yes, sir.

The distinction between intelligence-gathering activities and operations can easily be codified.

Senator NUNN. I would like very much for you to submit to this committee your ideas about how that kind of a distinction can be

drawn in legislation and also the practical effects of it on your agency and also the other agencies as you see it.

We have had other witnesses testify that the difference between those two is extremely difficult to draw.

Mr. ELLSWORTH. Really?

All right, I will do what I can.

Senator NUNN. I think it would be very helpful, if you could. I do not know whether it can be done or not. Certainly it will come up in the markup of this legislation as to whether that can be separated out.

The other question is: If you did say in legislation that the committee does not have to have advance notice of individual activities in the intelligence gathering area, could you also lay out a requirement that the committee be notified of the broad guidelines under which this information would be gathered?

Mr. ELLSWORTH. Easily.

Senator NUNN. Could that be done?

Mr. ELLSWORTH. Easily.

Senator NUNN. Senator Weicker?

Senator WEICKER. Thank you, Mr. Chairman.

I have one more question for Secretary Ellsworth, however, I would also like to use this occasion to respond to your comments and the comments of Senator Percy.

First of all, to Senator Nunn. This Senator does not advocate and has never advocated a national plebiscite. What I have and do advocate is an end to no debate.

That is what has precipitated not only this hearing, but the rash of hearings throughout the Congress, the fact that the Congress did not debate on behalf of the people the crisis and issues confronting this country.

Senator Percy alludes to the fact that the Constitutional Convention started off in secrecy. I would like to allude to the fact in New England the government was first just a town meeting where everybody participated in the decision.

That is the beginnings of the United States.

It then evolved, both at the local level and Federal level that that vote was turned over to a representative of the people, a Senator and a Congressman.

So, in response to my colleagues, it is not a question of going back to a town meeting form of government; we are too big. But I do believe the time has come to stop the drift to what in the past has been referred to as an imperial presidency.

There is a duty that sits on the shoulders of each one of us in the Congress. We are not—and I have to draw issue with Senator Percy—we are not accountants after the fact. We are policymakers along with the executive branch of Government and our handiwork is reviewed, to that extent, by the judicial branch.

So I reemphasize that what is at issue here is whether or not the Congress of the United States is willing to take the unpleasantness on its shoulders and decide for the people that it represents the outcome of our policies and the direction of our policies.

The reaction that we are involved with today is the reaction to excessive secrecy, not to excessive knowledge. Reference has been made

to the damage caused by the information released in the last couple of years.

I believe that the damage caused by secrecy is far greater.

The war in Vietnam was embarked upon and continued and continued under the veil of secrecy, and certainly, whether we are talking about our economy or whatever, nothing has caused more damage to the United States of America than that conflict that came about in an atmosphere of secrecy, that was continued in secrecy, and would have been continued if secrecy had not been broken.

I have total faith in the decisions of the American people as long as they have the facts upon which to decide and that is all I am asking for here today, that their elected representatives—all of them, not just the President, but all of them—take that responsibility on their shoulders, take the unpleasantness, not give the President the authority or give somebody else the authority.

We have had everybody in here, Directors of the CIA, various agents of the administration, Secretaries of Defense, et cetera. As far as assessing what went wrong, there should be a whole line of Congressmen and Senators at that bench right there. As much went wrong there as anywhere else.

Secretary Clifford yesterday was just as concerned as I was that the great danger now is not that there will be an over-reaction, but that we will go right back to the old system. That is the danger. That is what bothers me about the press of the last several days, or the comments of the administration the last several days.

Some people have overstepped their bounds. They probably have in the House—but, you cannot use that as an excuse to go back to the old system. If you want this democracy supplanted with some crazy alternative, or if you want our intelligence or law enforcement supplanted with some crazy nothing then we will just go back to the old system. The next time around, they will just be kicked out, lock, stock, and barrel and we will be left with nothing out there in the way of intelligence or law enforcement, or indeed, a democratic system.

That is my call. Not for the extremes of yesteryear or for a continuing investigation, but swing that pendulum back in the middle where it can survive, as far as our law enforcement capability is concerned.

Senator BROCK. Will the Senator yield?

Senator WEICKER. I yield to the Senator from Tennessee.

Senator BROCK. I think it is only fair to the witness for him to understand why the style and perhaps the emphasis of the Senator from Connecticut and myself has a certain divergence today, that I completely subscribe to today, because we are both sponsoring the same bill, and we agree thoroughly and totally on where we will end up.

I just want the record to be clear on that.

Senator WEICKER. Thank you very much, Senator Brock.

I wish the public could see the agonizing that goes on behind the scenes as we discuss these matters as to where it is we do want to end up.

So far this argument so many times is couched on the extreme positions on both sides, among those of us who are trying to come to a middle position, or a new position, something that the country has not lived with before, but the very fact it is new is what is going to make this country survive.

This last question, Mr. Secretary, the justification books in the Comptroller's Office are already broken out to illustrate the consolidated intelligence budget which is under the national intelligence budget. Tactical intelligence is separated, is that correct? Or is it possible now to apply virtually your own accounting procedures to break these matters up?

I was a little confused on that.

Mr. ELLSWORTH. That is what we are attempting to do in response to Chairman Mahon's request.

Senator WEICKER. Thank you, Mr. Chairman.

Senator NUNN. I might just say, Senator Weicker, in brief response, that I certainly agree with your opening statement that we need to stop the pendulum in the middle. I think the charge of this committee is to prevent the status quo, and to prevent the pendulum from swinging in a certain direction on the other side.

I would say what continues to puzzle me, though, is how all of the people's representatives in Congress are going to debate this kind of issue. I still have not seen a legislative proposal that would do that.

I repeat if there is a legislative proposal that engages all of Congress in a decision whether we should furnish covert activity or aid to any kind of foreign agency, I have not seen it. At some point the Congress has to put its faith in a certain committee to really carry out congressional oversight.

I thought that was a point that all of us agreed on, but some of the conversation has left me very puzzled about that.

I would be glad to yield to your response to that.

Senator BROCK. If I may respond myself, I think the purpose that we have is to do exactly what the Republic does with the Congress itself.

We do not have town meetings on every issue. We elect representatives, and they do represent in the Congress. We also elect representatives for the committees, and that is what we have done today. That, in fact, is a representation of the entire Congress, in turn, the entire American people.

So it may be a question of semantics.

Senator NUNN. I think that is right. I certainly think that Congress has got to exercise proper oversight. I do not think we have that oversight now.

I do not know if we are in that much disagreement, but at some point there has to be a decision made.

We are not going to be able to involve everybody in Congress on every decision. We are not going to be able to have a national debate on every problem. It is just impossible.

Again, I have not seen anybody who is proposing that so I do think we are not far from agreement.

Mr. Ellsworth, do you want to comment on any of my dialog?

Mr. ELLSWORTH. I do not have really anything further to add, Senator, to the splendid dialog that has taken place.

Senator NUNN. We will adjourn until Monday morning, until 10 o'clock.

[Whereupon, at 12:20 p.m. the committee recessed, to reconvene Monday, February 2, 1976 at 10 a.m.]

[REDACTED]

OVERSIGHT OF U.S. GOVERNMENT INTELLIGENCE FUNCTIONS

MONDAY, FEBRUARY 2, 1976

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The committee met, pursuant to recess, at 10:05 a.m., in room 3302, the Dirksen Senate Office Building, the Honorable Abraham Ribicoff (chairman of the committee) presiding.

Present: Senators Ribicoff, Nunn, and Glenn.

Staff members present: Richard A. Wegman, chief counsel and staff director; Paul Hoff, counsel; Paul Rosenthal, assistant counsel; Marilyn A. Harris, chief clerk, and Elizabeth A. Preast, assistant chief clerk.

Chairman RIBICOFF. The committee will be in order.

I understand Mr. Calamaro is here.

Mr. CALAMARO. Yes, Senator.

Chairman RIBICOFF. Mr. Halperin is here too. Why do not both of you come up? Usually, I start the hearings at 10 o'clock. My two Senators are not here. Could I impose on you, when the Senators come, to step aside for a few minutes. This way, we can save time.

Mr. Halperin and Mr. Calamaro, would you proceed as you will?

Mr. HALPERIN. Mr. Chairman, I have a prepared statement that I would like to ask to be put into the record.

Chairman RIBICOFF. Without objection, it will be printed at the conclusion of your testimony.

TESTIMONY OF MORTON H. HALPERIN, DIRECTOR, PROJECT ON NATIONAL SECURITY AND CIVIL LIBERTIES

Mr. HALPERIN. I really wanted to make a few points. I have had a chance to look over the statements that have come before. I just want to comment on some things that it seems to me have not gotten sufficient attention.

It seems to me, the first thing to remember is that these hearings are being held, and there is an interest in improving oversight, because we now have a public record of abuses by almost all of the intelligence organizations whose existence we know of.

I think it is important to emphasize that these are not aberrations as they occasionally have been called, that most of these abuses were, in fact, programs of these agencies, programs that went on in many cases for 15, 20, and 25 years, programs which clearly violated the

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laws of the land and the Constitution, the charters of the agencies, and the ideals for which we stand in the world.

For example, the mail opening program was a regular program of the CIA, regularly approved, and it went on for 20 years. The program of NSA intercepting all of the international cable traffic sent abroad by American citizens was again a regular program authorized at the highest levels of the Agency and which went forward over a period of 25 years. The FBI program of entering people's homes and offices without warrants was again a regular program; so was the Cointel program of the FBI.

All of these were not aberrations; they were regularly approved programs in the formal systems of the agencies, in many cases approved by the heads of the agencies, in many cases approved by the President of the United States.

So it seems to me it is not enough to say that times have changed. It is not enough to say that we have good people in these agencies now. It seems to me clear that Congress needs to legislate changes in the structure of the intelligence community, changes in the scope of civil and criminal penalties, and what this committee is now focusing on, it needs to create an effective oversight system.

The second point that I would make is that I think it is essential that the oversight committee have functions relating to domestic intelligence, including the FBI, as well as national intelligence from the CIA and Department of Defense.

One reason for this is that if one looks at the abuses that have occurred, they almost all occurred at the nexus between those two things. The question is what should be done that overlaps between foreign intelligence and domestic intelligence.

The mail opening, for example, was largely a counterintelligence program run by the CIA really for the FBI to try to discover the efforts of the Soviet Union to recruit agents within the United States.

The NSA cable reading program was basically a program which was a service to the FBI, to the Drug Abuse Agency, and so on.

The CIA CHAOS program arose from the mingling of the requirement to know whether there were foreign connections with these organizations and the question of what activities they were engaged in in the United States. The CIA ended up collecting information about domestic dissidents that the FBI was unwilling or unable to collect.

The hard problems have come precisely in trying to relate foreign intelligence with domestic intelligence. Therefore, I would urge the committee to not be put off by statements by administrators and budgeteers that say it is very hard to break this out, and we do not know exactly which is national intelligence or which is tactical, which is domestic intelligence or which is law enforcement.

The committee should insist that the job of administrators and budgeteers is to make the distinctions that are important for policy purposes. It is clear that oversight in this area requires that one committee look at both what the foreign agencies are doing and what the domestic agencies are doing.

Let me turn then to the question of secrecy, leaks, and the question of who has the authority to authorize the disclosure of information.

I think it is important to emphasize that the problem is too much secrecy. We had comments in the last few weeks trying to create the

impression the problem is leaks. The problem is and remains that information that should be released is not released.

It is important to recognize that the problem is mainly within the executive branch of the Government. There are hundreds, if not thousands, of people within the executive branch with authority to classify information and with authority to declassify information, and that authority, the authority to keep things secret, is used routinely to keep information secret precisely to prevent public debate, to prevent public and congressional debate on the issues.

Even when the motive for secrecy is a more legitimate one, the view that release will harm national security, often no attention is given to the importance of public debate. The executive branch does not balance the public's right to know and the Congress' right to the information against its perception of the national security needs for secrecy.

It simply looks at the national security need for secrecy or its own bureaucratic interests in secrecy or the President's political interests in secrecy, and says we will keep this information secret because it is in our interest to do so.

Therefore, it seems to me that one needs to try to right this balance.

I would also point out, while there have been some complaints lately of leaks from the Congress, that most of the leaking that occurs in this town occurs in the executive branch. Indeed, the extent of leaking from the executive branch is so large as to make the small amount of leaking that comes from the Congress really very insignificant in the process.

Presidents have never been able to keep their own staffs from leaking. I think that they should deal with that problem rather than assert that the leaks come from the Congress.

In my view, the process now is one of which Congress is basically dependent on leaks from people in the executive branch who want the information to come out. That should not be the case.

It is essential that the oversight committee of the Senate be able to demand the information that it needs from any part of the intelligence community and that it be able to make its own decisions about whether information should in fact be made public.

The procedures that the Senate Select Committee has followed are, in fact, the right ones, and the appropriate ones both politically and constitutionally. As I understand it, what the committee has done when it decides to make public information that it has obtained, it submits the information to the intelligence community, gives it ample opportunity to raise objections to that, notifies the President of what it proposes to make public, and considers his objection and then makes its own decision about whether it should be released or not.

In my view, that is the proper procedure and one that I would urge the committee to follow in setting up rules for the oversight committee.

Senator RIBICOFF. Mr. Halperin and Mr. Calamaro, our two Senators are here now. Could I impose upon you two gentlemen to step aside temporarily and give Senator Nelson and Senator Cranston an opportunity to be heard?

Mr. HALPERIN. Certainly.

Chairman RIBICOFF. Thank you.

Senator Nelson, we are delighted to have your views.

**TESTIMONY OF HON. GAYLORD NELSON, A U.S. SENATOR FROM
THE STATE OF WISCONSIN**

Senator NELSON. Mr. Chairman, members of the committee, my testimony is directed to the question of domestic surveillance of American citizens, not to the question of foreign intelligence activities. Thus, my remarks are addressed to the provisions of S. 189, which I have introduced with some modifications and several cosponsors on three occasions since June 18, 1973.

Two years earlier, on April 14, 1971, I introduced S. 1550, legislation proposing to create a commission composed of both representatives of the public and congressional Members charged with the responsibility to "investigate the entire range of domestic surveillance" and recommended oversight legislation. This 1971 legislation preceded Watergate by 2 years.

The fundamental responsibility of Congress to protect the constitutional rights of its citizens from unlawful intrusions by agencies of the Government has existed from the time of our founding. It was not created by Watergate. The disclosures of Watergate simply exposed in a dramatic fashion the failure of Congress to perform one of its fundamental responsibilities.

This history is recited simply to show that we have neglected an important responsibility for decades and to point out that specific legislation on domestic surveillance has been pending in the Senate for 5 years without conclusive action as of this date. The first two legislative proposals in April of 1971 and June of 1973 were referred to the Judiciary Committee. The next two were introduced in November of 1973 and January 1975. They were drafted to assure their referral to the Government Operations Committee because, quite frankly, we thought the chance for some action was better here.

Senator Jackson and I offered this same bill 1½ years ago, with only minor differences, on the Senate floor as an amendment to the Privacy Act sponsored by Senator Sam Ervin. We withdrew the amendment upon receiving assurances hearings on the legislation would be held by the Government Operations Committee.

Those hearings were held on December 9 and 10 of 1974. Including testimony before this committee on May 31, 1974, this will be the third occasion I have appeared before this committee or one of its subcommittees on this legislation.

I recognized that when Senate Resolution 231, which I sponsored along with 14 cosponsors, was adopted it would not be practicable for this committee to proceed any more expeditiously than it has to this date. Thus I wish to commend the chairman and members of the committee for proceeding to grapple with the two problems of domestic surveillance and foreign intelligence activities.

When we drafted the original Senate Resolution 231 in my office, we were concerned primarily—indeed, exclusively, as a matter of fact, with a timetable for action on the issue of domestic surveillance. By agreement the resolution was drafted and a timetable for legislative action set that would permit the committee and the Congress to receive the benefit of the deliberations and recommendations of the Church committee established by Senate Resolution 21.

Unfortunately, I think, during the first 5 days of hearings the 13 witnesses appear to have devoted their testimony almost exclusively

to the issue of foreign intelligence activities. I've found this impression from the witnesses prepared statements and the resulting coverage in the press. I do not know whether domestic surveillance questions have been raised with the witnesses. But in terms of major emphasis, FBI Director Clarence Kelley appears to have been the only witness who addressed himself to the problems of domestic surveillance. I hope this emphasis on foreign intelligence operations indicates that the committee is satisfied that its prior two hearings in 1974 have established a sufficient record to enable it to establish a procedure for oversight of domestic surveillance activities. If my hope is not justified, then I trust the committee will call witnesses to testify on the specific question of domestic surveillance and the legislation pending before the committee on that issue.

Both domestic surveillance and foreign intelligence operations are very important issues. However, in my view, the more important issue is not the one on which the committee has been hearing testimony and which has been generating publicity these past 2 weeks. The vital issue is domestic surveillance which involves the constitutional rights of American citizens and which if left unsupervised poses a threat to stability and freedom in this country. If this committee and Congress can address themselves to only one of these issues, in my judgment, our primary concern should be to create a mechanism overseeing domestic surveillance.

Let me briefly elaborate my concern on this point: I hope the committee does not assume that there is any important similarity between the nature and character of the problems raised by the Government's involvement in domestic surveillance as contrasted with its involvement in foreign intelligence activities. These two activities present fundamentally different problems and must be dealt with separately, in different ways and pursuant to different legal and constitutional guidelines. I do not believe it is practicable to attempt to design a single oversight committee to deal with both of these problems.

Periodically, from 1971 to 1974 my staff and I attempted to design a bill to provide congressional oversight of both of these activities in a single committee. After 3 years of considering the problem and discussing it with various constitutional authorities, we concluded that one committee should not be charged with the responsibility of overseeing both activities.

Oversight of foreign intelligence activities is necessary, and I believe a practical, effective method can be designed. However, a number of practical, political, and difficult policy decisions must be made in areas where a consensus is not yet clearly discernible.

Domestic surveillance involves fundamental questions of individual constitutional rights. Foreign intelligence activities do not.

There are clear guidelines under which to conduct oversight of domestic surveillance—the Constitution and Federal statutes as interpreted by the courts. There are no such guidelines for foreign intelligence activities.

Domestic surveillance oversight does not involve difficult political, foreign policy, and military security problems. Foreign intelligence activities do.

Domestic oversight does not involve problems of preclearance of sensitive matters. Foreign intelligence activities do.

Domestic oversight does not involve any serious problems of "leaks" that might involve our security as a Nation. Foreign intelligence activities do.

Because of the existence of clear guidelines and the absence of major unsolved policy problems, the task of overseeing domestic surveillance is relatively simple.

The legislation that is pending before you, S. 189, which was introduced by myself, Senator Jackson, and Senator Muskie, would establish a Joint Congressional Committee to oversee domestic surveillance activities.

I would ask that the balance of my statement be placed in the record. I would also ask the committee's permission to insert in the record two prior statements I have made concerning the need for this legislation.

Chairman RIBICOFF. Without objection.

Senator NELSON. I would just like to emphasize a few important points. The most significant aspect of overseeing domestic surveillance—and one key difference between domestic and foreign oversight—is the availability of clear guidelines by which an oversight committee could distinguish legal surveillance from illegal. Those guidelines are furnished by the first amendment, fourth amendment, Federal statutes, and case law interpreting them.

The proposal in this bill would create a joint committee. A joint committee strikes me as preferable because it would focus responsibility in one committee, to the benefit of both Congress and the executive branch. However, the composition of the committee does not strike me as a crucial issue. I would certainly view a Senate committee, as well as a joint committee, as being acceptable.

My proposal would set up an oversight committee and require, that at least once a year, the head of each agency that had any authority to conduct any kind of surveillance testify under oath concerning its domestic surveillance activities of the previous year. If the agencies had engaged in wiretapping or other activities that involved search and seizure under the fourth amendment, the agency heads would be required to show that the agency had demonstrated probable cause to the court in compliance with the Constitution, and that the court had then issued a warrant on probable cause.

This is a simple matter. I see nothing sensitive about it.

Unlike the foreign intelligence area, it would not be necessary for the agencies to obtain prior clearance of proposed surveillances from the oversight committee. I do not envision, for instance, that the FBI would have to seek permission from the committee to undertake wiretaps against members of the Mafia. In our constitutional system, this role is played by the courts, checking the proposed surveillance to see if the requisite probable cause can be demonstrated—given the judicial role, and the clear guidelines for the committee. Legislative oversight of surveillance activities after the activities have taken place should be adequate to assure compliance.

Moreover, as a practical matter, compliance will be further assured by the obligations which my bill places on the representatives of the agencies. The agency heads will be on notice that they will be called at least once a year to testify under oath about their agency's surveillance activities. They will know that the committee has the power to

subpena other witnesses whose testimony will be relevant; for example, the committee might hear testimony from FBI division heads in New York, Los Angeles, and Milwaukee 1 year; and San Francisco, New Orleans, and Miami, the following year. They will be aware of the penalties for false testimony. These provisions will inevitably help deter illegal surveillance. In sum, this is a simple bill, making a simple proposal for an oversight mechanism. I would hope that the committee would act on it and send it out, and I think that it can be passed within the timetable set forth in Senate Resolution 231.

In any event, I would urge very strongly not to treat foreign intelligence activities and domestic surveillance as one problem because there is no significant similarity between them. One of them involves security and constitutional rights of our citizens, the other does not.

Thank you.

Chairman RIBICOFF. Thank you.

I only have one basic question for you, Senator Nelson.

Do you think that domestic counterintelligence as distinct from domestic surveillance could be included in the new committee with foreign intelligence?

Senator NELSON. Under my proposal, we seek to oversee all surveillance of American citizens occurring within the jurisdictional boundaries of the United States. Domestic counterintelligence could very well fall under this heading. However, if you are going to set up a committee to oversee foreign intelligence, it would be perfectly sound for that committee to oversee anything involving matters of foreign intelligence or foreign relations. Domestic counterintelligence could well be a subject for that committee as well, I do not think that would pose any problem.

We covered it here because we were not doing anything about foreign intelligence activities. Our focus was simply all surveillance or intelligence activities occurring in this country.

Chairman RIBICOFF. What do you have in mind when you talk about domestic surveillance?

Senator NELSON. I have in mind military surveillance of civilians which the Ervin committee uncovered, which included the use of military intelligence officers to infiltrate church and political organizations throughout the country during the Vietnam period.

The FBI engages in domestic surveillance regularly. We have not specified what agencies should be covered. The goal of the bill is to insure that every agency of the Government which engages in domestic surveillance would come before an oversight committee to report on their activities. I am not talking about foreign intelligence, spies or that sort of thing. I am talking about surveillance activities within this country. We are dealing with the question of the FBI Director and all of his far-flung activities, as well as the surveillance activities of other agencies.

Chairman RIBICOFF. Frankly, I think the committee has a problem. We are under instructions to send a bill to the Rules Committee by March 1. Our hearings go right through Friday. Starting Friday, as you know, there is a recess until the 16th.

On the 18th, I have formally notified the members of the committee that we will start markup. It seems to me that gives us 10 days, including the weekend. That will be quite a task, with all of the differences

of opinion and controversy, to put together an oversight committee to handle foreign intelligence.

Frankly, I do not think that we are going to put together another oversight committee by March 1 to cover domestic surveillance. I want to be very frank and honest with you. Trying to do them both is what is bothering me.

First we have the problem of getting a quorum to act. Whether I could get the other committee members together to stay with this task, I do not know. I am going to try.

I do not foresee the possibility of doing both by March 1.

Senator NELSON. I appreciate the nature of the problem. What disturbs me is that in the area of domestic surveillance, it has been obvious for years that something should be done.

I made a major speech on the floor of the Senate in 1967 pointing out what a threat this kind of activity was presenting to the country and recommending congressional activity. I proposed oversight legislation in 1971, 1973, 1975, and it is clear there is no substantial barrier, substantive or political, to its adoption. It does not involve this difficult business of preclearance of covert operations or what the Congress should know or how to police leaks.

This bill has been drafted several times. The mechanics are simple. The constitutional guidelines are relatively clear. It is not a difficult question. It is a comparatively easy question.

Overseeing foreign intelligence is another matter. I stopped trying to draft legislation in this area because there were so many difficult policy judgments remaining to be made.

I think the time has come to face the domestic surveillance issue head on and legislate on the problem. If you tie the two issues together, I think we will be taking action which will leave constitutional rights unprotected 5 years from now. That's what worries me.

Chairman RIBICOFF. Let me ask you, do you support the Church bill?

Senator NELSON. I have not seen it.

Chairman RIBICOFF. The basic concept of it?

Senator NELSON. I am opposed to the concept of joining them in one committee. I think it would be a disaster. Unless some persuasive reason that I am not now aware of were advanced, I would move to substitute on the floor of the Senate a proposal to separate oversight of domestic surveillance and foreign intelligence. There is not a similarity of any consequence between the problems raised by foreign intelligence activities and domestic surveillance and intelligence activities. There are no individual constitutional rights involved in foreign intelligence at all. That is the whole question in domestic surveillance. And I don't believe that legislation combining the two into one committee will pass the Senate.

Chairman RIBICOFF. Senator Glenn?

Senator GLENN. Thank you, Mr. Chairman.

Some of our testimony and our efforts at trying to decide whether to set up a single committee or whatever it is going to be—this bothers me somewhat that you feel that these are that separable into very clear delineations of responsibility, because I think some of the testimony before the committee has indicated that there is a considerable

overlap here, that some domestic surveillance is done in developing the leads for the international problem, whatever it may be, and that there is a considerable overlap here.

How would you take care of a situation like that?

I want to protect against the political misuse of anything domestically just as much as you do, of course. That is where we have run afoul in the last 2 years in a particularly bad way.

How would you take care of the situation where there is a domestic surveillance set up between CIA and FBI and IRS or whoever, and there are taps going on which develop something which might be very important in international intelligence.

That would not come under your bill, or would it? Would it be reported and would it get into the area of foreign intelligence?

My direct question is to develop this idea of how separable these things are into their nice little pigeonholes. I question whether it is separable.

Senator NELSON. In my view, the problem you are raising is relatively minor. Historically, if the CIA was conducting surveillance on a foreign spy, and the spy left Paris, for example, and came to New York, the FBI, theoretically, would pick up the case. In operational terms, there is overlap between domestic and foreign, but it is handled relatively easily. Setting up a committee to oversee domestic surveillance would not affect the operational capacities of the agencies, and the occasional overlap between domestic and foreign surveillance is not a strong argument against having a committee for domestic surveillance oversight.

The touchstone of my legislation is surveillance activities within the jurisdictional boundaries of the United States. The issue is the security of the people of this country against unchecked police power. The security of the people's constitutional rights under the fourth and fifth amendments is the whole heart of the matter of overseeing domestic surveillance of any kind.

If the intelligence agencies are involved in surveillance with international or foreign overtones or implications, it may well be a matter which would come also to the attention of a committee overseeing foreign intelligence. This duplication does not concern me. My purpose is to make sure that at least if an American citizen is involved, an oversight committee be informed and be able to ascertain whether proper constitutional procedures were followed.

The committee would not be concerned with the particular details of every surveillance—whether it involves a foreign spy in this country, an American acting as a foreign agent, or a member of the Mafia—as long as the investigating agency goes into court under the fourth amendment, makes application for a warrant and presents its evidence of probable cause to believe that a crime is being committed or is about to be committed. If the court agrees, it issues a warrant.

What we are trying to guarantee is that at the end of the year, the FBI Director comes in and testifies that, "we had probable cause to conduct surveillance on Mr. X." The Director would not have to give the target's name; in most cases, the committee would probably not want to know it. On occasion, when they would, a small subcommittee might be appointed to examine that surveillance.

So the overlap within this country between foreign and domestic is not an oversight problem. All the committee that I am proposing would deal with is this country and the constitutional rights of our citizens.

Senator GLENN. Would you cover just certain of the intelligence operations, or the whole thing?

What I am getting at is this. CIA right now, as I understand it, it is illegal for CIA to be involved in domestic surveillance now. The FBI has that job.

Would you limit this to just FBI and IRS and solely domestic organizations, or would you include the whole bag, all the CIA and the whole works, even though they are technically excluded from domestic surveillance now?

Senator NELSON. The CIA would be included. The goal is to have the Directors of the agencies come before the committee where they would be asked: Are you in compliance with your authority, or have you done any surveillance activity in this country—

Senator GLENN. Including CIA?

Senator NELSON [continuing]. Including CIA.

If he says "No" under oath, that is the end of the hearing.

Senator GLENN. If he says "Yes," he has violated his charter.

Senator NELSON. If he says "Yes," he has violated his charter. If he says "No" and has done it, he has committed perjury, which is a pretty good reason for not violating your charter.

Senator GLENN. We know from testimony that CIA has participated in many of these activities in violation of their charter. That gets back to the whole area of overlap that is existent now. But I see difficulties separating these two things out as clearly as you think they can be separated out.

Senator NELSON. I do not think that is difficult.

In the first place, it is very unlikely that anybody who knows they are coming before the committee, under oath, will violate the charter. Do you think J. Edgar Hoover would have done the things he did if he was going to be here under oath with the penalties of perjury and he knew that his deputy would be called in and he knew somebody from the FBI in New York would be called in and he knew that at some stage he is going to be caught?

What is dangerous is unsupervised power. If people have power and know that nobody is ever going to supervise them, they are likely to abuse their power.

The purpose of this legislation is to make sure that power is not abused.

If there is any surveillance within the country of an American citizen, it should be covered by the committee, established by my legislation, S. 189. Even though it may be that an American citizen is a hired spy from the Soviet Union, he is an American citizen and he does have constitutional rights.

I do not think you could ever create a lacuna in the law that will not be expanded widely.

Recent administrations have argued that you can have a warrantless wiretap for national security reasons. That is absolutely preposterous.

The fourth amendment is clear. But President Nixon said that we can have a warrantless wiretap for national security. It turned out that what he considered a national security risk was anything that threatened him. For this reason, you cannot have any exceptions at all—either to a warrant requirement or to the requirement that surveillance be reported to the oversight committee.

I think it would be simple enough—any activity conducted in this country involving electronic surveillance—no matter what it is—would come under the jurisdiction of this committee. If it involved foreign intelligence, it would be under the other committee as well, but the function in the domestic field would be to insure that the Constitution is complied with.

Senator GLENN. Thank you very much.

Mr. Chairman, how hard and fast is our mandate of March 1? I know this was given to the committee. These things are so important, on how we are going to set them up. I am very concerned that we do not rush something through here and try to get something out covering one part of this.

When I think about the point that Senator Nelson made about separating these things out is something that we should definitely consider.

Chairman RUBICOFF. I do not think you can. Senator Nelson is talking about two committees. I am very skeptical that within a reasonable period of time we can set up two oversight committees, and I question whether the Senate would work its will on two committees at this time. Before the year is up, they might. I do not think at this time they will.

This is something that you can bring up with Senator Nelson on the floor. I do not know the interest of the other members. We have two members here today—I do not know on the 18th whether I will be able to get a quorum.

Senator NELSON. When I drafted that bill we put some target dates—you were involved in it, as I recall. We picked one we thought would be reasonable, and we hoped that we would pass legislation by June 1. If it cannot be done, I think it would be worthwhile to come to the floor and propose an amendment extending the time a bit. I think it would be a good idea to formally extend the time rather than just ignore the resolution.

Chairman RUBICOFF. I think the deadline on the Church bill is March 1. We do not have that restriction on this bill.

Senator NELSON. What the resolution said was that there should be a recommendation on bills proposed to the committee and action by the Senate by June 1 on the issues of domestic surveillance and foreign intelligence gathering.

There is no direction, of course, in the resolution that the issues must be handled in one committee.

Chairman RUBICOFF. The resolution for March 1 is specifically on the Church bill.

Senator NELSON. No. We do not mention any bill at all.

Chairman RUBICOFF. Not yours. I think there was a restriction in the Church bill. I was not on the floor. My understanding, from the staff, is that the Church bill was put in on Thursday. It contained that language that we should report a bill by March 1 to the Rules Committee.

Senator NELSON. If they did, they just took the language out of the resolution which we passed.

Chairman RIBICOFF. It says here, this is a bill that was read twice and by unanimous consent was referred to the Committee on Government Operations to report not later than March 1, 1976, then to the Committee on Rules and Administration to report not later than March 20, 1976.

It is specifically in S. 2893.

Senator NELSON. That is a rather interesting concept. From now on, every time a bill is put in, if you want it passed, put a date in it by which it has to be passed.

Chairman RIBICOFF. Thank you very much.

Senator NELSON. Thank you very much.

[The prepared statement of Senator Nelson with additional information, follows:]

PREPARED STATEMENT OF HON. GAYLORD NELSON, A U.S. SENATOR FROM THE
STATE OF WISCONSIN

My testimony is directed to the question of domestic surveillance of American citizens, not to the question of foreign intelligence activities. Thus my remarks are addressed to the provisions of S. 189 which I have introduced with some modifications and several cosponsors on three occasions since June 18, 1973. Two years earlier on April 15, 1971, I introduced S. 1550 creating a commission composed of both public and congressional members charged with the responsibility to "investigate the entire range of domestic surveillance" and recommend oversight legislation. This 1971 legislation preceded "Watergate" by two years. The fundamental responsibility of Congress to protect the constitutional rights of its citizens from intrusions by agencies of the government has existed from the time of our founding. It was not created by "Watergate". The disclosures of "Watergate" simply exposed in dramatic fashion the failure of Congress to perform one of its fundamental responsibilities.

This history is recited simply to show that we have neglected an important responsibility for decades and to point out that specific legislation on domestic surveillance has been pending in the Senate for five years without conclusive action as of this date. The first two legislative proposals in April of 1971 and June of 1973 were referred to the Judiciary Committee. The next two were introduced in November of 1973 and January 1975. They were drafted to assure their referral to the Government Operations Committee because, quite frankly, we thought the chance for some action was better here.

A year and one half ago Senator Jackson and I offered this same bill with only minor differences, on the Senate floor as an amendment to the Privacy Act sponsored by Senator Sam Ervin. We withdrew the amendment upon receiving assurances hearings would be held by the Government Operations Committee. Those hearings were held on December 9 and 10 of 1974. Including testimony before this committee on May 31, 1974 this will be the third occasion I have appeared before this committee or one of its subcommittees on this legislation.

I recognize that when S. Res. 231, which I sponsored along with 14 cosponsors, was adopted it would not be practicable for this committee to proceed any more expeditiously than it has to this date. Thus I wish to commend the Chairman and members of the committee for proceeding to grapple with the two problems of domestic surveillance and foreign intelligence activities.

When we drafted the original S. Res. 231 in my office we were concerned primarily and exclusively, as a matter of fact with a timetable for action on the issue of domestic surveillance. By agreement the resolution was drafted and a timetable for legislative action set that would permit the committee and the Congress to receive the benefit of the deliberations and recommendations of the Church committee established by S. Res. 21.

Unfortunately, I think, during the first five days of hearings the thirteen witnesses appear to have devoted their testimony almost exclusively to the issue of foreign intelligence activities. FBI Director Clarence Kelley was the one exception. I hope that indicates that the Committee is satisfied that its prior

two hearings in 1974 have established a sufficient record to enable it to establish a procedure for oversight of domestic surveillance activities. If my hope is not justified, then I trust the committee will call witnesses to testify on the specific question of domestic surveillance and the legislation pending before the committee on that issue.

Let me briefly elaborate my concern on this point. It is this I hope the committee does not assume that there is any important similarity between the nature and character of the problems raised by the Government's involvement in domestic surveillance as contrasted with its involvement in foreign intelligence activities. These two activities present fundamentally different problems and must be dealt with separately, in different ways and pursuant to different legal and constitutional guide lines. I do not believe it is practicable to attempt to design a single oversight committee to deal with both of these problems. Periodically from 1971 to 1974 my staff and I attempted to design a bill to provide Congressional oversight of both of these activities in a single committee. We finally gave up and confined our efforts solely to the issue of domestic surveillance.

Oversight of foreign intelligence activities is necessary, and I believe a practical, effective method can be designed. However, a number of practical, political and difficult policy decisions will need to be made in many areas where a consensus is not yet clearly discernible.

Domestic surveillance involves fundamental questions of individual constitutional rights. Foreign intelligence activities do not.

There are clear guidelines under which to conduct oversight of domestic surveillance—the Constitution and federal statutes as interpreted by the courts. There are no such guidelines for foreign intelligence activities.

Domestic surveillance oversight does not involve difficult political, foreign policy and military security problems. Foreign intelligence activities do.

Domestic oversight does not involve problems of pre-clearance of sensitive matters. Foreign intelligence activities do.

Domestic oversight does not involve any serious problem of "leaks" that might involve our security as a nation. Foreign intelligence activities do.

Because of the existence of clear guidelines and the absence of major unsolved policy problems, the task of overseeing domestic surveillance is relatively simple. My legislation would establish a joint congressional committee to oversee domestic surveillance. At least once a year, the representatives of the CIA, FBI, IRS and every federal agency that engages in surveillance would be required to appear before the committee with all relevant documents and other evidentiary materials to testify under oath about the full scope and nature of their respective agency's spying activities within the United States. The joint committee would be entitled to all relevant information concerning these activities. There would be no exceptions. Since the agency representatives would be testifying under oath, a failure to disclose certain surveillance activities would expose them to the possibility of criminal sanctions. The committee would also have the power to subpoena other individuals, public or private, who could provide testimony or evidence relative to the surveillance activities of the federal agencies.

The committee will issue reports as often as it deems necessary, but would be obligated to report at least annually. These reports would include the committee's findings as to whether the government is complying fully with the law, whether the courts are exercising their review powers diligently, and whether additional legislation is needed to protect the right of privacy and other constitutional rights from government surveillance.

The requirement that each government agency engaged in surveillance report at least annually imposes a legal obligation on both the committee and the agency heads which cannot be evaded. In my judgment, this specific requirement is preferable to more general language requiring the agencies in question to keep the committee "fully and currently informed". The looser standard lends itself to easy abuse and the subjective judgment by the agency heads or the committee chairman that the committee knows enough about the agency's activities.

At the same time, the burden placed on the legitimate law enforcement activities would be minimal. As noted above, my proposal does not envision that the oversight committee would be involved in approving or clearing instances of domestic surveillance before that surveillance is initiated. This responsibility is assumed by the courts which review proposed surveillances

for the requisite probable cause when a warrant is requested. The oversight committee's concern would be whether the warranted requirement had been followed. In instances where the obligation to obtain a warrant had been evaded, the official involved would be exposed to criminal or civil sanctions. The committee would also be concerned with determining whether the warrant application was being done carefully or in a perfunctory manner.

Because prior consultation between the committee and the Executive branch will not be involved, the problem of maintaining secrecy assumes much less importance. Although the Justice Department has argued in certain cases that courts could not be trusted with information about certain sensitive surveillances relating to national security, there is absolutely no evidence to support this claim. As to the oversight committee, I do not envision that it would be particularly concerned with ascertaining the identity of individuals who were under surveillance or the names of individuals who were working with the law enforcement agencies as informers. The committee's concern would be insuring that the government was acting lawfully—whoever the individuals or groups under surveillance were—and understanding the surveillance practices of law enforcement agencies in order to recommend additional legislation necessary to curb abuses.

My legislation provides for the establishment of a joint congressional committee, rather than a Senate committee. A joint committee would have the advantage of housing responsibility for overseeing domestic surveillance in one body, which would be beneficial to both the Congress and the government agencies required to report to it. I realize that a number of previous witnesses have expressed the view that a separate oversight committee in each House should be established. While my view that a joint committee would be preferable remains unchanged, the important thing is that the Congress create some mechanism to insure that domestic surveillance will be overseen. If this committee decides to propose the establishment of a Senate Oversight Committee, to handle domestic surveillance, I would certainly support that proposal.

My thinking about the committee's membership has undergone some changes. The 1973 version of my legislation provided that the committee would be composed of the leadership of both Houses and the ranking majority and minority members of fourteen committees of Congress which have jurisdiction in areas which would be affected by the oversight committee's work. Subsequently, I concluded that a committee of this size would be unwieldy and that the proposal was somewhat unrealistic in view of the workload of the ranking members of major committees and the leadership. Additionally, I recognized the advantages of a more flexible proposal which would open the committee to talented and interested younger members of Congress. Consequently, S. 189, the current version of my legislation, proposes that the committee be composed of eight members of each House, four to be appointed by the majority leader and four to be appointed by the minority leader.

S. Res. 231 committed the Senate to act by March 1, 1976 on proposals for legislative oversight and to pass by June 1, 1976, "such appropriate legislation as may be necessary in order to assure that the intelligence activities of the Federal Government are effective and consistent with the Constitution and laws of the United States". The controversies presently surrounding foreign intelligence operations should not divert the Senate from its obligation to act on and pass legislation which would secure individual freedom. Congress should not delude itself that the threat to civil liberties has passed because domestic surveillance has moved off the front pages of the newspapers.

Political philosophers have long thought that power unchecked will eventually become power abused, and the events of recent years have sadly confirmed the wisdom of their observations. In the Federalist Papers, James Madison wrote that Congress was "the confidential guardian of the rights and liberties of the people." It is time we met our responsibility and safeguarded our precious freedom. Unchecked police power has violated the rights of countless Americans; it threatens the rights of all.

PREPARED STATEMENT OF HON. GAYLORD NELSON, A U.S. SENATOR FROM THE STATE OF WISCONSIN BEFORE SUBCOMMITTEE OF INTERGOVERNMENTAL RELATIONS OF THE COMMITTEE ON GOVERNMENT OPERATIONS ON DECEMBER 9, 1974

More than twenty years ago, Supreme Court Justice Felix Frankfurter described the evolution of tyrannical power in the Executive Branch: "The accre-

tion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority."

Unfortunately, Justice Frankfurter's observation does much to explain why individual liberty has been eroded by an ever expanding web of surveillance conducted at all levels of government. For many years now, the government has used both simple and sophisticated techniques to exercise almost unlimited power over the individual. The government installs wiretaps, plants electronic bugs, uses computerized information to assemble dossiers on individuals, and engages in other surveillance activities which make a mockery of the individual freedoms guaranteed by our Constitution.

The dangers of uncontrolled government surveillance were exposed again only last month. The Justice Department released a report detailing the "cointelpro" program—the FBI's secret surveillance and disruption of organizations which the FBI considered to be a threat. These organizations included the Urban League, the Southern Christian Leadership Conference, the Congress on Racial Equality and other politically active groups. It was not shown that the individual members of these organizations were violating the law, and the FBI did not seek or receive the approval of the Attorney General or the President. Acting entirely on its own, the FBI engaged in these activities between 1956 and 1971. These activities included sending false and anonymous letters to discredit selected individuals in the eyes of their peers, informing an employer of the individual's membership in a particular group so that the individual might be fired, passing on information to credit bureaus to harm the individual economically, and even disclosing information to the media of one individual's love life. The activities were terminated when the "Media Papers" publicly exposed some of them in 1971. And it was understandable why such public exposure would be a deterrent. The Justice Department's study called some of those activities "abhorrent to a free society," and Attorney General Saxbe said that the disclosures underscored the need for the Justice Department to supervise the FBI more closely.

These revelations concerning the FBI coincided with other revelations concerning the surveillance activities of the Internal Revenue Service. According to recently disclosed documents, the IRS—(acting at the behest of the White House—monitored the tax records and political activities of 3,000 groups and 8,000 individuals between 1969 and 1973. The groups monitored included the Urban League, Americans for Democratic Action, the National Student Association, the Unitarian Society and the National Council of Churches. These IRS activities did not reflect a neutral enforcement of the tax laws; they represented instead a blatant attempt to secure private information about the politics of people whose views did not coincide with those of the White House. Indeed, these secret activities were continued for four years despite the fact that there was little information to show violation of the tax laws.)

These FBI and IRS actions, as well as other surveillance activities, make clear the need for Congressional controls of government spying. To this end, Senator Jackson and I introduced S. 2738, a bill which would establish a bipartisan joint committee of Congress to oversee *all* government surveillance activities. I am submitting for the record an amended version of the legislation. The amendments are basically only refinements of the existing language.

Under this bill, at least once each year, representatives of the FBI, the IRS, and every governmental agency that engages in surveillance would be required to testify before the joint committee under oath about the full scope and nature of their respective agency's spying activities. The joint committee, moreover, would be entitled to *all* relevant information concerning those activities and practices. There is only one narrowly defined exception to the committee's broad jurisdiction over government surveillance: those cases *directly* involving foreign powers who are engaged in *unlawful* activities which endanger this country's security. However, the Committee would be explicitly directed to obtain information from the government concerning the criteria used to determine whether an activity qualifies under the exception. This, in turn, would help insure that the exception is not misused or interpreted too broadly.

As part of its responsibilities, the joint committee would be obligated to (report to the full Congress as often as it deems necessary, but in any event, at least once a year. The report would include the committee's findings as to whether the government is complying fully with the law, whether the courts are exercising their review powers diligently, and whether additional legislation is

needed to protect the right to privacy and other fundamental liberties of individual citizens.)

The need for this continuing and comprehensive congressional oversight is beyond question. The FBI and IRS activities I cited earlier are not isolated incidents. Indeed, other examples make clear that there is an incredibly broad system of government surveillance which can and often does escape congressional scrutiny. Among these examples are the following:

In 1970, President Nixon approved the "Huston Plan," an interagency scheme for domestic surveillance which provided for the use of wiretaps, electronic bugs, break-ins and other activities which a staff assistant described as "clearly illegal." Although the plan was revoked five days later, because of the objections by FBI Director Hoover, President Nixon's continued interest in the idea ultimately led to the creation of the "Plumbers," a White House unit which carried out the break-in at Daniel Ellsberg's psychiatrist's office and engaged in other questionable surveillance activities. Indeed, one recent article reported that there had been at least 100 illegal break-ins conducted by the "plumbers" and other secret government units.

A 1973 Senate subcommittee report detailed the extensive spying secretly conducted by 1500 agents of the U.S. Army on more than 100,000 civilians in the late 1960's. This surveillance was directed principally at those suspected of engaging in political dissent. No one in the Congress knew about this spying. No one in the Executive Branch would accept responsibility for it. Again, there is no guarantee that this sorry episode will not be repeated. In fact, a Senate Committee learned recently that the military would no longer spy on civilians—the U.S. Army has maintained numerous surveillance operations on civilians in the United States. And an article in *The New Republic* magazine of March 30, 1974, detailed the U.S. Army's use of wiretaps, infiltrators, and other surveillance techniques to spy on American citizens living abroad who supported the presidential candidacy of George McGovern. The Army's spying was reportedly so extensive that it even intercepted a letter from a college librarian in South Carolina who requested information about a German publication.

Last May, the United States Supreme Court decided the *Chavez* and *Giordano* cases. Those cases involved the government's use of wiretaps between 1969 and 1971 which were not approved by the Attorney General or a specially designated Assistant Attorney General. The Court held that this failure was a clear violation of federal law. This illegal wiretap authorization, it turned out, had been used in 60 cases involving 626 persons. In other words, thousands of telephone conversations involving hundreds of people were intercepted by the government before anyone knew about the illegality of this action or could do anything to stop it.

The Justice Department still maintains practice of installing warrantless wiretaps on American citizens and others when it feels "national security" is involved. This practice violates the plain language of the Fourth Amendment—which requires a judicial warrant based on probable cause before the government can invade an individual's privacy. Last October, the Attorney General testified before a Senate subcommittee that "the public record is sufficiently clear that there has been no serious abuse of discretion over the years of national security wiretaps installed in foreign intelligence purposes." While I do not question the Attorney General's integrity, that is a hard statement to swallow. Except for the abuses exposed recently—and quite by accident, it should be added—there is no public record on national security wiretaps. The Congress does not even know how many of these wiretaps are operative today, let alone any specific information concerning their justification. Lacking any information, how can the Congress or the public be assured that there have been no abuses. The Attorney General is an honorable man, but our cherished constitutional rights should not hang by the slender thread of one man's good faith. Indeed, other Senate testimony last October suggested that the extent and abuses of national security wiretapping may be far more extensive than is presently known. William Bender of Rutgers Law School, who represents individual subject to wiretaps, said that, on his review of thousands of pages of wiretap logs, the government's intelligence wiretap program is much broader than the public knows.

These examples are only the tip of the iceberg. As early as 1967, Professor Alan Westin reported in his book, *Privacy and Freedom*, that

At least fifty different federal agencies have substantial investigative and enforcement functions, providing a corps of more than 20,000 "investigators"

working for agencies such as the FBI, Naval Intelligence, the Post Office, the Narcotics Bureau of the Treasury, the Securities and Exchange Commission, the Internal Revenue Service, the Food and Drug Administration, the State Department, and the Civil Service Commission. While all executive agencies are under federal law and executive regulation, the factual reality is that each agency and department has wide day-to-day discretion over the investigative practices of its officials.

The numbers—and dangers—of this official spying have surely increased since 1967. But even those 1967 figures, as well as the examples I have described, should be more than sufficient to demonstrate what should be clear to everyone: uncontrolled government spying is a dangerous assault on our constitutional liberties. Those liberties are the cornerstone of our democratic system and any assault on them cannot be treated lightly. A society cannot remain free and tolerate a government which can invade an individual's privacy at will.

One does not have to attribute malevolent motives to government officials in order to realize the need for congressional action here. Good intentions are not the criteria for judging the lawfulness or propriety of government action. In fact, the best of intentions often produce the greatest dangers to individual liberty. As Supreme Court Justice Brandeis once observed:

"Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repel invasions of their liberty by evil-minded rules. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."

Relying on this historical judgment, the Supreme Court held in the 1972 *Kerth* case that the Government cannot wiretap American citizens for "domestic security" purposes without court authorization. In issuing this decision, the court declared, as a matter of constitutional law, that the Government's self-discipline is inadequate to protect the individual freedoms guaranteed by the Fourth Amendment. The Court's judgment was not premised on the malicious dispositions of those who inhabit the Executive Branch. Rather, the judgment flowed from the conflicting interests which the Government is required to serve. Speaking for a unanimous Court, Justice Lewis Powell examined the evolution and contours of the freedoms protected by the Fourth Amendment. He then stated:

"These Fourth Amendment freedoms cannot properly be guaranteed if domestic security surveillances may be conducted solely within the discretion of the executive branch. The Fourth Amendment does not contemplate the executive officers of Government as neutral and disinterested magistrates. Their duty and responsibility is to enforce the laws, to investigate and to prosecute. . . . The historical judgment, which the Fourth Amendment accepts, is that unreviewed executive discretion may yield too readily to pressure to obtain incriminating evidence and overlook potential invasion of privacy and protected speech."

In this context, a congressional oversight committee would be a two-edged sword in the effort to end the abuses of government spying. On the one hand, this committee could provide assurance to the public that government surveillance activities are limited to those conducted by lawful means and for legitimate purposes. On the other hand, the oversight committee could help the Executive Branch to insure that government agents do not misuse the public authority entrusted to them. Fulfillment of these two functions by the oversight committee would do much to eliminate illegal and unethical government spying.

In considering creation of a congressional oversight committee, Congress should not fear that the power to investigate and conduct surveillance is exclusively within the jurisdiction of the Executive Branch and that Congress has no right to sensitive information concerning such investigations and surveillance activities. Certainly there is no language in the Constitution which allows government surveillance activities to escape congressional scrutiny. It should be remembered here that the "separation of powers" concept does not mean that each branch of government can operate entirely independent of the others. As Harvard professor Richard Neustadt observed, it is more appropriate to speak of separate institutions sharing power rather than institutions having separate powers. Indeed, the fundamental premise of our constitutional system is that all power is "fenced about," that every coordinate branch of government is subject to the check of the other branches. If government investigative and surveillance activities can be maintained by government secrecy, there would be no way for the Congress to know whether it should exercise its power to check the Executive Branch.

Moreover, a lack of congressional oversight would cripple Congress's ability to protect those individual freedoms guaranteed to everyone by the Constitution. In *The Federalist Papers*, James Madison acknowledged Congress as "the confidential guardians of the rights and liberties of the people." (No. 50.) Congress cannot fulfill its responsibility to protect those rights and liberties unless it first has the facts concerning the scope and nature of government investigative and surveillance activities. Access to those facts is also important if Congress is to exercise its other responsibilities. Thus, the Constitution empowers Congress—not the President—to regulate interstate commerce; the Constitution empowers Congress—not the President—to enact laws concerning the punishment of criminal offenses and the protection of individual privacy. And perhaps most important of all, the Constitution empowers Congress—not the President—to appropriate public monies for government operations, including investigative and surveillance activities.

Madison said that "this power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of grievances, and for carrying into effect every just and salutary measure." (*The Federalist Papers*, No. 58). And only last June, in denying a citizen standing to have a public accounting of how the CIA spends public funds, the United States Supreme Court declared that "the subject matter is committed to the surveillance of Congress, and ultimately to the political process." Referring to Article I, section 9, clause 7 of the Constitution—which requires a published account of public expenditures—the Court also took note of "nearly two centuries of acceptance of a reading of clause 7 as vesting in Congress plenary power to spell out the details of precisely when and with what specificity Executive agencies must report the expenditure of appropriated funds and to exempt certain secret activities from comprehensive public reporting." (*United States v. Richardson*, S.Ct. No. 72-885, June 25, 1974, slip op. at 12.) The thrust of these statements is clear: Congress' power over appropriations includes the power to obtain facts as to how the funds have been implemented in the past. Otherwise, Congress has no firm basis to know how it should appropriate funds in the future.

The need for this congressional oversight committee, then, should not be underestimated. The individual's right to privacy is one of our most cherished liberties. It is fundamental to the concept of democratic self-government where each individual's private thoughts and beliefs are beyond the reach of government. Without that right to privacy, the individual's freedom to participate in and guide his government is jeopardized. Government then becomes a monster to be feared rather than a servant to be trusted. As Justice Stephen Field stated in 1888:

"Of all the rights of the citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves not merely protection of his person from assault, but exemption of his private affairs, books and papers from the scrutiny of others. Without enjoyment of this right, all others would lose half their value."

A right so vital to individual liberty and, indeed, to our constitutional system deserves rigorous protection by Congress—the people's chosen representatives. The legislation we have offered provides a timely opportunity to establish that protection and assure the American public that individual freedom is still the foundation of our political system.

[From the Congressional Record—Senate, Nov. 26, 1973; pp. S20988-S20994]

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. Nelson (for himself and Mr. Jackson) :

S. 2738. A bill relating to the necessity of reorganizing certain departments and agencies of the executive branch, and for other purposes. Referred to the Committee on Government Operations.

GOVERNMENT SURVEILLANCE AND THE THREAT TO INDIVIDUAL PRIVACY: A NEED TO REORGANIZE THE GOVERNMENT

Mr. NELSON. Mr. President, approximately 185 years ago, Thomas Jefferson warned that—

The natural progress of things is for liberty to yield and government to gain ground.

The time has long since past for Congress to exercise control over government surveillance and recordkeeping activities. When the Government invades an individual's privacy—whether by wiretapping, electronic bugs, or some other means—it strikes at the individual freedoms essential to democratic self-government. Government then becomes a threat to the very constitutional rights and liberties it was designed to defend. None of us can afford to be insensitive to this risk of government spying and prying.

I introduced legislation in 1971 and in June of this year aimed at bringing this dangerous activity under congressional oversight. Senator Jackson and I have joined in presenting further legislation at this time seeking the same objective. It is my intention to continue raising this issue on the Senate floor until Congress awakens to the serious threat to liberty posed by Government surveillance.

The need for Congress to act is more pressing today than ever before. The incidence of spying at all levels of government seems to grow unabated. Virtually every day congressional committees, as well as newspapers and magazines, expose new details of how Federal, State, and local governmental agencies intrude into the private affairs of America's citizens. Examples abound:

One night last spring Federal agents battered down the doors of two law-abiding families in Collinsville, Ill., on the mistaken assumption that the families were in possession of dangerous drugs.

Joseph Kraft, a syndicated columnist, learned that the Government not only burglarized his home to install a wiretap on his telephone but also shadowed him in his foreign travels.

A Senate subcommittee reported that it cannot determine the name of the official who initiated the surveillance activities of 1,500 U.S. Army agents on more than 100,000 law-abiding private citizens.

No one knows how many illegal wiretaps have been used by Government agents but enough evidence has been exposed to give cause for alarm.

The rise in Government snooping has not escaped the attention of the public. Numerous commentators and periodicals have reported the public's growing concern that Government surveillance and recordkeeping activities are endangering the individual's right to privacy.

This legitimate public concern was aptly summarized in an article titled "Political Surveillance and Police Intelligence Gathering—Rights, Wrongs, and Remedies," which appeared in the Wisconsin Law Review last year:

Eleven years from the title date of George Orwell's fictionalized account of the totalitarianism of the future, many Americans sense that "Big Brother" is emerging as a terrifying reality in the United States. There are no posters or broadcasts proclaimed the fact, but to many the ubiquitous surveillance, represented by the telescreen and the thought police in Orwell's novel, is upon us in the guise of the proliferating governmental agencies engaged in the business of spying.

A report released by the Department of Health, Education, and Welfare, in July, 1973, titled "Records, Computers and the Rights of Citizens," confirms that fear of governmental snooping still prevails among the public. The HEW report related the results of a public opinion survey in which a very large proportion of the respondents expressed concern that their personal privacy was being seriously compromised by Government surveillance and recordkeeping activities. The source of this public concern is not obscure. As the HEW report explained—

The public fear of a "Big Brother" system, in effect a pervasive network of intelligence dossiers, focuses on the computer, but it includes other marvels of twentieth-century engineering, such as the telephone taps, the wireless microphone, the automatic surveillance camera, and the rest of the modern investigator's technical equipage.

This HEW report adds new weight to the public's deep concern with Government spying. Much of this concern reflects the public response to the Government activities exposed by the Senate Watergate hearings. In a recent poll, for example, Louis Harris found that—

The revelations of the Watergate investigation have had a profound impact on the American people's awareness of threats to individual liberty and have made the public much more convinced that specific acts by government have been not only unnecessary but dangerous.

Indeed, Mr. Harris also reported that 52 percent of those surveyed "now agrees with the statement that things have become more repressive in this country in the past few years." In a word, this public opinion poll, as well as numerous other commentaries and reports, make clear the public's fear that the Government often invades the individual's privacy with little or no justification.

The Government's pervasive violations of individual privacy must not go unchallenged. Indeed, if Congress refuses to respond to these violations, it will be nothing less than an abdication of Congress responsibility to safeguard individual liberty. It is therefore imperative that Congress act now to reverse this tide of government snooping.

Accordingly, Senator Jackson and I are introducing legislation today which will provide Congress with critically necessary oversight of government surveillance activities. Specifically, this bill will establish a Joint Committee on the Continuing Study of the Need to Reorganize the Departments and Agencies Engaging in Surveillance. The joint committee will be bipartisan and will include representation from those Senate and House committees which have jurisdiction over those agencies and departments engaging in surveillance. The joint committee will have two basic responsibilities. First, it will examine the surveillance activities of all Federal agencies. Second, it will review the intergovernmental relationships among the Federal, State, and local governmental agencies insofar as those relationships concern the conduct of and the sharing of information acquired by surveillance activities. Having executed these two responsibilities, the joint committee will be able to recommend whatever changes are necessary in law and in governmental structure in order to protect individual privacy against intrusion by the Government.

I. THE PROBLEM DEFINED

The problem of government surveillance is not new. In fact, its origins pre-date the birth of our Nation.

Early English history, for example, is replete with instances in which the king's agents sought to invade the homes of citizens suspected of wrongdoing. This practice was firmly condemned by the English courts as early as 1603 in *Semayne's Case*, 5 Cook 91, 11 ERC 629, 77 Eng. Reprint 194:

In all cases where the king is party, the sheriff (if the doors be not open) may break in the party's house, either to arrest him, or to do other execution of the K(ing's) process, if otherwise he cannot enter. But before he breaks it, he ought to signify the cause of his coming, and to make request to open doors . . .

The English court's concern for the individual's right of privacy did not entirely dampen the willingness of some British officials to ignore that right in pursuit of certain governmental interests. In 1766, the British Parliament debated means to assure collection of an excise tax on cider. One proposal would have authorized the king's officers to enter a citizen's home without knocking. In opposition to this proposal, William Pitt argued eloquently in the House of Lords that it would emasculate the time-honored principle which protected each citizen from the unlawful invasions of his privacy by the Government:

The poorest man may, in his cottage, bid defiance to all the forces of the Crown. It may be frail. Its roof may shake. The wind may blow through it. The storm may enter. The rain may enter. But the King of England cannot enter. All his force dares not cross the threshold of that ruined tenement (William Pitt—1776)

What the King of England could not do 200 years ago the American Government today does with abandon. The Government burglarizes homes, installs wiretaps on private phones, and engages in other kinds of deplorable surveillance activities which violate the sanctity of an individual's privacy. These activities not only violate American traditions, but more importantly, also violate constitutional rights and established legal procedures.

In the American colonies, no less than in England, people appreciated the fundamental importance of a citizen's right of privacy. The Colonials also understood that that right would be a fragile one if left to the guardianship of a government more eager to suppress political dissent than to safeguard individual liberty.

For the American colonials, this lesson was learned from bitter experience. British agents frequently violated the sanctity of the colonials' homes by conducting searches authorized by only a general warrant and by otherwise harassing those suspected of treasonous sentiments.

In response to these hated abuses, the framers of our Constitution adopted the fourth amendment. That amendment states quite simply that—

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized.

The fourth amendment's provisions apply to all searches and seizures. No exception is made for national security cases or any other kind of circumstance. The absence of any expressed exceptions, moreover, cannot be interpreted as an oversight or a failure of the Founding Fathers to appreciate future developments in which world affairs would be overshadowed by a nuclear sword of Damocles.

When the Constitution was drafted in 1787, our country was only 11 years old. The new American citizens had recently concluded a long war with England to preserve their country's independence. That independence was not entirely secure. The threat of foreign attack and subversion was still present. Notwithstanding the existence of this threat, the Founding Fathers adopted the fourth amendment and made no exception to its application.

One need not be a lawyer to understand the basic purpose of this amendment. It is designed to protect the individual from unjustified invasions of his privacy by the Government.

The fourth amendment thus limits the power of the Government. Like the other amendments in the Bill of Rights, the fourth amendment reflects the framers' intention that individual liberty, rather than unrestrained governmental power, be the hallmark of our political system. As Justice Louis Brandeis observed in his moving dissent in the case of *Olmstead versus the United States*:

The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed must be deemed a violation of the Fourth Amendment.

The wisdom of the framers in adopting the fourth amendment is beyond question. Without its protection, individual freedom would remain at the mercy of the Government's unbridled discretion.

However sound the principle embraced within the fourth amendment, its words have a hollow ring today. For those words have done little to restrain government at any level from engaging in surveillance of law-abiding citizens.

There are innumerable examples to demonstrate the scope of government spying and other invasions of privacy. Reference to a few is sufficient to expose the grave implications which this snooping has for individual liberty.

As early as 1967 Prof. Alan Westin reported in his book, "Privacy and Freedom," that—

At least fifty different federal agencies have substantial investigative and enforcement functions, providing a corps of more than 20,000 "investigators" working for agencies such as the FBI, Naval Intelligence, the Post Office, the Narcotics Bureau of the Treasury, the Securities and Exchange Commission, the Internal Revenue Service, the Food and Drug Administration, the State Department, and the Civil Service Commission. While all executive agencies are under federal law and executive regulation, the factual reality is that each agency and department has wide day-to-day discretion over the investigative practices of its officials.

In short, there is an army of governmental agents engaged in surveillance activities who are, in large measure, accountable to no one but themselves. Congress has virtually no procedure to determine whether these surveillance activities are conducted in a manner consistent with constitutional rights and established law.

A 1973 report of Senator Ervin's Subcommittee on Constitutional Rights detailed the extensive spying which the U.S. Army had conducted on more than 100,000 private citizens during the 1960's. This surveillance was directed princi-

pally at those suspected of engaging in political dissent. According to the subcommittee:

Army surveillance of civilians engaging in political activities in the 1960's was both massive and unrestrained. At the height of the monitoring, the Army engaged over 1,500 plainclothes agents to collect information which was placed in scores of data centers around the country.

Needless to say, this Army surveillance well exceeded any legal authority granted to the Army. It was therefore important to determine who was responsible for initiating this unlawful surveillance. Incredibly enough, the subcommittee could not make that determination:

The subcommittee has been unable to conclude what particular official or officials were responsible for ordering the expansion of the surveillance operation in the late 1960's.

On April 14, 1971, it was revealed that the FBI had conducted general surveillance of Earth Day activities on April 22, 1970. As the one who initiated and planned that first celebration of Earth Day in 1970, I cannot imagine any justification for FBI surveillance of those activities. Earth Day resulted in a genuine and peaceful demonstration by tens of thousands of American citizens of their overriding concern to preserve our natural environmental resources. There is nothing subversive or otherwise dangerous in expressing that concern. Indeed, it fall squarely within the American tradition and, for that reason, attracted the participation and support of 150 Members of Congress, more than 100 representatives of the Nixon administration, and numerous Governors.

In spite of its unquestioned legitimacy, Earth Day attracted FBI surveillance. There is still no satisfactory explanation as to why the FBI felt compelled to spy on those participating in the Earth Day celebration. Nor is there any reason to believe that the whole sorry episode cannot be repeated in the future.

In many cases, governmental agencies enlist the assistance of private organizations to help them to spy on private citizens. A 1968 article in Look magazine, for example, reported that governmental agents often requested and received information from American Airlines concerning the travel schedules of certain individuals. The article cited—

A computer expert for the airline [who] says that 10 to 15 investigators a day (Federal, State, local and other) are permitted to delve into the computer for such information. Some of them want (and get) a printout of the entire passenger list of a certain flight to see who might be traveling with a particular person.

As another example, the State of Florida utilized the services of the Wackenhut Corp., a large private detective firm, to conduct a wide-ranging investigation into crime and corruption.

In many cases, the surveillance is as indiscriminate as it is unjustified. Law-abiding citizens often find that they are subjects of governmental surveillance merely to satisfy the whim of governmental officials. Columnist Joseph Kraft, for example, was no doubt surprised to learn that the government had burglarized his home in 1969 to install a tap on his phone and shadowed his foreign travels merely because his columns raised the ire of high-placed government officials.

These invasions of privacy by the government, in and of themselves, are, to say the least, disturbing. Even more disturbing, however, is the fact that most of us—and especially those of us in official positions of responsibility—have become so inured to government snooping that we often fail to appreciate its serious dangers.

We cannot afford to take individual liberty for granted. We cannot afford to ignore the dangers which government spying poses for that liberty—no matter how benign the government's motives. Government surveillance always poses great dangers to a free society. This is especially true today since those dangers have been aggravated in recent years by two basic developments.

First, government snooping has been facilitated, and made more insidious, by advanced techniques of surveillance. Numerous articles have underscored the rapid pace at which new surveillance devices are developed.

An article in the January 1971 issue of Transactions on Aerospace and Electronic Systems, for instance, reported the proposal of an electric "transponder" system to help prevent crime. Under this system, any individual with a criminal record will be required to carry a small radio. The radio, in turn, emits waves which can enable enforcement officials to locate that individual at any time.

An article titled "New Bug Hears All," which was printed in the February 20, 1972, issue of Parade magazine, discussed another advanced means of surveillance now being used by the FBI. The new device is a bug which, when placed on an outside telephone line, can pick up all sounds through a telephone receiver, even when the receiver remains on the hook.

The ingenuity—and potential danger—of this new bug is perhaps surpassed only by the design of a new communications system which would enable the Government to turn on all television and radio sets on a moment's notice.

These and other new developments in surveillance techniques invoke the specter of a government which can intrude its eyes and ears into every nook and cranny of our private lives. None of us can afford to be insensitive to the reality of this spectre. For it raises anew the fundamental question of how willing and able we are to preserve those individual liberties for which our forbears fought.

Familiarized with the advanced techniques of surveillance, Justice William Brennan posed this fundamental question in his dissent in the 1963 case of *Lopez* against the United States. In Justice Brennan's view—

Electronic aids add a whole new dimension to eavesdropping. They make it more penetrating, more truly obnoxious to a free society. Electronic surveillance, in fact, makes the police more omniscient; and police omniscience is one of the most effective tools of tyranny.

Justice Brennan then articulated the inherent dangers of a Government which can spy on its citizens with little or no restraint:

Electronic surveillance strikes deeper than at the ancient feeling that a man's home is his castle; it strikes at freedom of communication, a postulate of our kind of society . . . [F]reedom of speech is undermined where people fear to speak unconstrainedly in what they suppose to be the privacy of home or office. If electronic surveillance by government becomes sufficiently widespread, and there is little in prospect for checking it, the hazard that as a people we may become hagridden and furtive is not fantasy.

These hazards of government snooping have been made more real by a second major development: the rapid growth of an intergovernmental system whereby the Federal Government acts in conjunction with the State and local governments to conduct and share the fruits of surveillance. Much of this growth can be attributed to title III of the Omnibus Crime Control and Safe Streets Act of 1968. That title, among other things, enabled State and local enforcement officials to seek court-authorized wiretaps for virtually any reason. As Prof. Herman Schwartz commented in an article, "The Legitimation of Electronic Eavesdropping: The Politics of 'Law and Order,'" which appeared in the *Michigan Law Review* in 1969—

In fact, the list of offenses for which state eavesdropping is permitted [under Title III] is practically unlimited: "murder, kidnapping, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marihuana or other dangerous drugs, or other crime dangerous to life, limb or property, and punishable by imprisonment for more than one year . . . or any conspiracy to commit any of the foregoing offenses."

State and local enforcement officials have made extensive use of this provision. Statistics reported by the Administrative Office of the U.S. Courts show that between 1968 and 1972 the number of State-authorized wiretaps increased from 174 to 649. During that time period, it is also noteworthy that the Federal, State, and local governments wire-tapped more than 1,623,000 conversations involving approximately 120,000 people.

All the information which the State and local governments acquire from these wiretaps is not retained in their exclusive possession. More often than not, that information is shared with innumerable Federal agencies, such as the FBI, the Law Enforcement Administration, the IRS, and the Secret Service.

In many cases, information acquired through wiretaps and other activities is not shared willingly with the Federal agencies. Frequently a Federal agency coerces a State or local government into sharing the information by dangling the threat of suspension of Federal funding for the particular government. As early as 1965, a report of the House Committee on Post Office and Civil Service summarized this insidious practice:

Since federally supported State programs have mushroomed in recent years, we are faced with rapidly expanding reporting and paperwork programs which, for all practical purposes, fall outside of any Federal or State supervision. This situation lends itself to all kinds of abuses since the Federal agency can threaten the

State agency by withholding funds unless all of its demands for information are met.

If the information were shared according to established standards for legitimate purposes, then the risks to constitutional rights might be minimal. But usually there are few standards and no assurances that the information will be used for lawful purposes. A recent letter from Gov. Francis Sargent of Massachusetts to then Attorney General Richardson offers a graphic illustration of the problem.

On June 13, 1973, Governor Sargent wrote to Mr. Richardson that Massachusetts would withhold its participation in the FBI's National Criminal Information Center, an interlocking computerized system enabling States to share criminal information on individuals with the FBI. Citing the 1967 Report of the President's Commission on Law Enforcement and Administration of Justice, Governor Sargent stated that Massachusetts would withhold its participation from this system until the Federal Government adopted standards adequate to safeguard individual rights:

... I take very seriously the President's Commission warning that the application of computer technology for criminal justice information requires special precautionary steps to protect individual rights. The Massachusetts criminal information system has been designed to provide internal and external safeguards against potential abuse. Unfortunately, I have seen no similar action on the part of the Department of Justice, the Attorney General or the Federal Bureau of Investigation to construct equivalent safeguards for the national criminal information system.

Governor Sargent's comments underscore a situation which prevails at the Justice Department and virtually every other governmental agency engaged in surveillance activities; there are no safeguards to which the agency is held accountable to the public or the law to insure that surveillance activities are conducted in a lawful manner and for legitimate purposes.

II. THE NEED FOR CONGRESSIONAL ACTION

In defining the permissible scope of Government invasion of privacy, it is obviously necessary to strike a balance between the need to safeguard individual liberty and the need for the Government to acquire information necessary to protect the Nation from foreign hostilities and to serve other legitimate purposes. It should now be more than clear that we cannot rely exclusively on the executive branch or the courts to strike that balance.

The Government would of course prefer that implicit trust be placed in its judgment. In 1971, then Assistant Attorney General William H. Rehnquist espoused this view in testimony before the Senate Subcommittee on Constitutional Rights:

We believe that full utilization of advanced data processing techniques is by no means inconsistent with the preservation of personal privacy. . . . I think it quite likely that self-discipline on the part of the Executive Branch will provide an answer to virtually all of the legitimate complaints against excess of information gathering.

These basic statements were echoed by then Attorney General Richardson in a letter dated September 12, 1973, to the chairman of the Senate Foreign Relations Committee. Responding to the committee's justified concern with government wiretaps purportedly used to protect the national security, Mr. Richardson acknowledged that the Constitution and recent judicial decisions limited the Government's power to wiretap. But the Attorney General made clear that, in the end, he would be the one to decide whether a particular wiretap would exceed those limitations.

As a matter of history and as a matter of law, we cannot rely on the self-discipline of the Executive branch to safeguard our constitutional rights. As a matter of history, the Government is not always able to judge dispassionately when its urge to engage in surveillance should yield to the paramount importance of individual liberty. This is no less true even when the motives of the Government are beyond question. Justice Brandeis succinctly summarized this teaching of history in his dissent in the *Olmstead* case:

Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to

liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.

Relying on this historical judgment, the Supreme Court in 1972 held in the case of the United States versus U.S. District Court that the Government cannot wiretap individuals for domestic security purposes without court authorization. In issuing this decision, the Court declared, as a matter of law, that the Government's self-discipline was inadequate to protect the individual liberties conferred by the fourth amendment. The Court's judgment was not premised on the malicious dispositions of those who inhabit the Executive branch. Rather, the judgment flowed from the conflicting interests which the Government is required to serve. Speaking for a unanimous Court, Justice William Powell examined the evolution and contours of the freedoms conferred by the fourth amendment. He then stated:

These Fourth Amendment freedoms cannot properly be guaranteed if domestic security surveillances may be conducted solely within the discretion of the executive branch. The Fourth Amendment does not contemplate the executive officers of Government as neutral and disinterested magistrates. Their duty and responsibility is to enforce the laws, to investigate and to prosecute . . . The historical judgment, which the Fourth Amendment accepts, is that unreviewed executive discretion may yield too readily to pressure to obtain incriminating evidence and overlook potential invasion of privacy and protected speech.

The Court expressly declined to decide whether the same judgment would attach to cases where the Government was intent upon conducting surveillance to protect national security interests. In my view, however, the same considerations which underlie the Court's decision in the domestic security case compel a conclusion that the fourth amendment also protects American citizens when the Government's urge to wiretap is motivated by national security interests. In short, to ask the Government—however, well-intentioned—to protect the individual's right to privacy in cases of government surveillance is usually no different than to ask the wolf to guard the sheep. In either case, there is no assurance that the valued asset will be preserved.

Nor is there much reason to believe that the courts can provide blanket protection of an individual's privacy against unlawful invasions by the government. The inability of the courts to provide this blanket protection stems from the nature of wiretap procedures and the scope of existing laws rather than from any deficiencies in the judges.

To begin with, most wiretapping and other surveillance activities are anticipatory in nature—they are geared toward uncovering possible crimes or other information which the government might find useful. In these cases, an individual might never learn that the government is spying on him. Accordingly, that individual would have no incentive to seek judicial relief.

The case of Morton Halperin is illustrative. In 1969, when he was a member of the staff of the National Security Council, Mr. Halperin had his telephone tapped. For 4 years, Mr. Halperin remained ignorant of the tap and never sought judicial relief. A string of fortuitous circumstances at the recent trial of Daniel Ellsberg in Los Angeles led the Government to reveal the existence of the tap. Although the courts successfully exposed a wiretap in this particular case, the circumstances strongly suggest that there are many more individuals who will never learn that Government is spying on them.

For these individuals, the court's protection is nonexistent. A court will not act on its own to restrict Government surveillance activities. The courts only act when specific controversies are brought to them for decision by particular individuals. This is, in effect, a "Catch 22" situation. On the one hand, an individual cannot object to Government surveillance activities unless he himself is a subject of such surveillance. On the other hand, there is no law which would require the Government—absent a criminal indictment or some other proof—to disclose on its own whether an individual is in fact a subject of surveillance.

The law, of course, is not entirely powerless to protect individuals against unlawful Government surveillance activities. Title III of the Crime Control and Safe Streets Act does provide certain remedies for individuals who are the subject of Government abuses. There are also some Federal, State, and local laws which are designed to protect an individual's privacy from unlawful invasions by the Government in certain circumstances. But these laws are fragmentary and generally unable to provide any comprehensive protection.

Prof. Arthur Miller, an acknowledged legal authority in this area, examined these legal limitations in an article, "Personal Privacy in the Computer Age: the

Challenge of a New Technology in an Information-Oriented Society," which appeared in the Michigan Law Review in 1969. Of particular concern to Professor Miller was the impact which the computer would have on the collection and dissemination of information acquired by surveillance or some other means. According to Professor Miller:

The present legal structure, at both the state and federal levels, appears to be virtually unprepared to cope with the threats to privacy that rapidly are becoming part of our computer age. The fragmented, ad hoc approach that has been taken to informational privacy problems is disheartening, for it simply aggravates the existing system's unsuitability for solving the problems raised by the computer. The result is confusion concerning the scope of protection afforded by various common-law doctrines and legislative provisions, and, quite frequently, uncertainty regarding the source of law applicable to a particular invasion of privacy.

Professor Miller's view was endorsed by the HEW report, on "Records, Computers, and the Rights of Citizens." The report states flatly that—

Under current law, a person's privacy is poorly protected against arbitrary or abusive recordkeeping practices.

The circumstances which I have described show that neither the courts nor the executive branch are always able to provide adequate safeguards for individual liberty. Congress, however, has done little to remedy the situation. This fact was perhaps reflected in the recent comment of John M. McDougal, the Army officer who provided the press with details of the U.S. Army's surveillance activities in Western Europe. In explaining his action, Mr. McDougal stated in a column which appeared in the op-ed pages of the New York Times of September 4, 1973:

After long deliberation on what course of action to take, I decided to release this information to the press. I choose the press because I believe it to be the strongest force for political and individual freedom in America today.

With all due respect to the virtues of the press, it is a sad commentary on the U.S. Congress that it is no longer viewed as the strongest defender of individual freedom. This development is not surprising. Congress has exercised few checks over Government surveillance at the Federal, State, or local levels. Congress has done little to discourage the Government from trampling all over constitutional liberties when conducting surveillance activities. Congress has not established itself as a forum to remedy the indignities and abuses to which thousands of individuals become subject when the Government decides to spy and pry on them. In short, Congress has done virtually nothing to supervise the everexpanding web of Government snooping.

This situation should be tolerated no longer. Ours is a government of laws. The integrity of those laws should not be entrusted to the unreviewed discretion of those charged with enforcing them. Otherwise, we accept the risk that the guarantees of the law will be sacrificed on the altar of expediency. That is a risk we cannot afford to accept, particularly when the guarantees involved are fundamental constitutional rights.

Congress must guard those rights with vigilance. It can do so only if it continually reviews the Government's surveillance activities and determines whether any changes are needed in the law or in the governmental structure in order to protect an individual's privacy against unlawful intrusions by the Government. To this end, Senator JACKSON and I are introducing legislation today to establish a joint committee of the Congress on the Study of the Need to Reorganize the Departments and Agencies Engaged in Surveillance.

III. THE PURPOSES AND RESPONSIBILITIES OF THE JOINT COMMITTEE

The joint committee will be a bipartisan assemblage of the majority and minority leaders of both Houses of Congress, as well as the chairman and ranking minority member of all those congressional committees having jurisdiction over governmental agencies which engage in surveillance activities. Those Senate Committees represented would include Government Operations, Appropriations, Armed Services, Commerce, Foreign Relations, Judiciary, and Post Office and Civil Service. Those House committees represented would include Government Operations, Appropriations, Armed Services, Foreign Affairs, Interstate and Foreign Commerce, Judiciary, and Post Office and Civil Service. By having bipartisan representation from each of these House and Senate committees, the joint committee will benefit by the expertise which Congress has on those governmental agencies which engage in surveillance activities.

The basic purpose of the joint committee will be to provide a continuing review of those governmental agencies which conduct surveillance activities in order to determine whether the protection of individual liberties, and especially the individual's rights to privacy, require any changes in the law or in the governmental structure. More specifically, the joint committee will have two basic responsibilities.

First, the joint committee will examine the nature and scope of the surveillance activities conducted by Federal agencies. At least once each year, officials from the IRS, the FBI, the military surveillance units, and other selected Federal agencies will be required to appear before the committee with all relevant documents and other evidentiary materials to testify under oath about their surveillance activities. The joint committee will also be empowered to subpoena other individuals, private or public, who can give testimony or evidence relative to the surveillance activities of Federal agencies. The first responsibility is of particular importance since Congress presently has no means to determine the nature or scope of Government surveillance activities.

Second, the joint committee will review the intergovernmental relationship between the Federal, State, and local governmental agencies insofar as that relationship involves the conduct of surveillance activities and the sharing of information acquired from such activities. The committee will be authorized to subpoena public and private witnesses as well as documents and other evidentiary materials, which are necessary to make this review. The focus of the joint committee's examinations here will be a determination whether any changes are needed in those intergovernmental relationships to protect individual liberties and, if so, whether such changes can be effected through the reorganization of relevant Federal agencies or enactment of laws.

The joint committee will issue reports as often as it deems necessary but in any event at least annually. The joint committee will also make recommendations for legislation concerning the reorganization of the Federal agencies or the reordering of intergovernmental relations if the committee determines that such changes are necessary to safeguard individual liberties from unlawful Government surveillance.

The creation of this joint committee will be a sound response to the numerous proposals from both public and private sources concerning the Government's collection and dissemination of information about a citizen's private affairs. As early as 1965 the Bureau of the Budget, concerned that the Government's informational policies posed serious threats to an individual's privacy, suggested the creation of a single Federal agency to collect and control the distribution of all such information in the Government's possession.

Professor Miller made a similar proposal in his article in the 1969 Michigan Law Review. Professor Miller premised his proposal on the establishment of clear standards to protect an individual's privacy:

The more attractive alternative [to control the Government's acquisition and distribution of private information] appears to be a data center that is functionally circumscribed and is structured to place a heavy premium on privacy considerations. Prior to establishing such a center, the government's information policies must be comprehensively evaluated in the hope of achieving an over-all balance between the need for massive amounts of raw data that can be handled efficiently and used for a variety of purposes and the obligation of the national government to preserve the privacy of its citizens. Moreover, this evaluation must be a continuing one in order to keep pace with changing agency practices in the collection and use of data.

The HEW report on records, computers, and the right of citizens likewise concluded that the creation of a new Federal agency might be necessary to protect individual privacy against Government acquisition and distribution of information. According to the report—

The "strongest" mechanism for safeguard [of individual privacy] which has been suggested is centralized, independent Federal agency to regulate the use of all automated personal data systems.

No doubt the joint committee will want to consider the proposals of the HEW report, Professor Miller, and others in determining what legal or structural changes are necessary to protect individual liberty against government surveillance and recordkeeping activities. Whatever proposals it finally recommends, however, the joint committee will provide the first, basic steps toward remedying the dangerous abuses of Government surveillance activities.

IV. CONCLUSION: A STEP TOWARD CONGRESSIONAL OVERSIGHT OF GOVERNMENT
SURVEILLANCE ACTIVITIES

We should not underestimate the importance of taking these first steps toward correcting the abuses of Government surveillance. The individual's right to privacy is one of our most cherished liberties. It is fundamental to the concept of democratic self-government where each individual's private thoughts and beliefs are beyond the reach of Government. Without that right to privacy, the individual's freedom is placed in jeopardy. Government then becomes a monster to be feared rather than a servant to be trusted. As Justice Field declared in the 1888 case of *In re Pacific Railway Commission*:

Of all the rights of the citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves not merely protection of his person from assault, but exemption of his private affairs, books and papers, from the inspection and scrutiny of others. Without the enjoyment of this right, all others would lose half their value.

Individual privacy, in short, provides the individual with the freedom to live his own philosophy without fear of retribution or repression by the Government.

The history of the past few years demonstrates that the Government has frequently accorded little respect for individual privacy when conducting surveillance of private citizens. The few examples I described earlier indicate that all too often the Government is willing to tolerate violations of individual privacy in the pursuit of information which it deems useful. As a result, many individuals have been and will be subjected to injustices in the name of government surveillance.

Congress cannot and should not stand idly by while this unjust condition continues to fester. Writing of the liberation of Paris from the Nazis in 1944, Albert Camus observed:

Nothing is given to men, and the little they can conquer is paid for with unjust deaths. But man's greatness lies elsewhere. It lies in his decision to be stronger than his condition. And if his condition is unjust, he has only one way of overcoming it, which is to be just himself.

It is my hope that Congress will aspire to this standard of greatness and act to correct the injustices of government surveillance activities.

Mr. President, I ask unanimous consent to have printed in the Record a copy of the bill to establish a Joint Committee on the Continuing Study of the Need To Reorganize the Departments and Agencies Engaging in Surveillance.

Chairman RIBICOFF. Senator Cranston.

TESTIMONY OF HON. ALAN CRANSTON, A U.S. SENATOR FROM
THE STATE OF CALIFORNIA

Senator CRANSTON. I appreciate very much this opportunity to appear before you on this very, very important matter.

I was interested in Senator Nelson's testimony. I have not thought through fully the idea of trying to separate the domestic from the foreign operations in the way he approached it.

There is another separation I would like to comment on briefly. There are advocates of separating intelligence-gathering from covert operations if they are to continue. I think I leaned in that direction until I read a piece by Leslie Gelb that appeared in the New York Times December 21. I would like to read one part of the paragraph where he opposes the concept of splitting them up.

He stated:

Transferring covert and related personnel to the State Department or the Pentagon, and establishing a new home for these services would only serve to transfer the problem, while creating the illusion of having done something.

From my experience, wherever the covert functions and secret operators are located, the same few senior officials continue making policy, so changing the venue would not change the policymakers.

Those who proposed these changes also argue that the covert operators in the CIA distort the Agency's intelligence estimates. But I would rather have them doing that than having greater and more direct influence over policy under the protective wings of the Secretaries of State or Defense.

These Secretaries are bound to be more wary of covert operators located in the CIA than if the operators were part of the State Department or Pentagon bureaucracy.

I want to applaud, Mr. Chairman and Senator Glenn, the outstanding work performed by the select committee, and particularly the suggestion put forth by a majority of the committee to establish a new standing committee on intelligence activities.

I think that Senator Hart has stated very clearly the reason for a separate committee instead of a joint committee when he stated—this is Gary Hart—“Separate committees will serve to prevent the possibility of a single committee being co-opted by the intelligence community or succumbing to the ‘cult of secrecy.’”

However, the number of existing committees, each of which has been given pieces of but none of which have ever had overall jurisdiction over U.S. intelligence activities, accounts in part for Congress' failure to execute effective oversight over these activities.

And because of that failure, Congress shares blame—not less than the Executive and probably more than the leaders of our intelligence community—for the deplorable and dangerous excesses that the United States has committed both at home and abroad in the name of national security.

I believe that the select committee's proposal gives adequate recognition to the need for a continuing role by the present relevant committees while at the same time wisely centering responsibility and accountability for oversight in a single, new committee.

I am glad that that committee under this proposal was given authorization responsibility as far as expenditures are concerned. I think we have to have a far closer look at expenditures than we have had in the past.

I have been trying for some time to find out exactly what the overall cost of intelligence operations of all sorts by all agencies have amounted to. I have found it very difficult to learn.

One of the Members of the Senate, reputedly totally informed as to the expenditures, gave me a figure far lower than what I now believe the figure to be. When I asked him for a probable figure, I do not believe he misled me deliberately. I believe he did not know the actual figure.

If you go back to May 1973, published estimates were that \$3 billion a year were spent for spying. That was the story in the Long Beach Press Telegram under the headline, “\$3 Billion Per Year for Spying.”

By November 1975, the figure had gone up to \$6 billion, according to a story by Leslie Gelb of the New York Times. Now the figure, the estimated figure—this is in the House select committee's report, apparently—is \$10 billion a year. That is according to a headline in the Washington Star: “House Report Says Intelligence Costs Nation \$10 Billion a Year.”

I am not at all certain that is the total figure; it may be even more the way these are escalating. We all have a responsibility to find out.

I believe the overall figure—not the entire budget, but the overall

total figure for each agency—should be published and that this committee should do whatever it can to see to it that that authority rests in whatever place is appropriate, and as a requirement in dealing with the intelligence community.

Secretary Schlesinger, when he was appearing before the Armed Services Committee in response to a question by Senator Harry Byrd of Virginia—this occurred way back in 1973—when asked whether it would be acceptable from a security point of view to publish the overall figure replied:

DR. SCHLESINGER. I think it might be an acceptable procedure, Senator, to indicate the total figure of the national intelligence programs.

Senator Byrd asked if there were any security reasons why it should not be done.

Dr. Schlesinger replied—he was then head of the CIA—when he was being considered in confirmation hearings to become Secretary of Defense:

For the gross figure, I think the security concerns are minimal. The component figures I would be more concerned about. For the gross national intelligence figures, I think we could live with that on a security basis, yes.

The only argument I believe that exists against using that, the only one I have heard is that if you give the total figure, then Congress will want more information. That I think we would have to resist.

The overall figures, I think, we need to have, if we want to be responsible in voting on budgets—how can we vote intelligently, any of us, on the intelligence budget when we do not know what the figure is? How can we vote intelligently on any other budget that is padded by the intelligence community's budget when that makes every figure, for example, in the Defense budget suspect because it may be padded very extensively to cover the costs of the intelligence operation?

I commend many other specific provisions of the committee bill. I will skip over the organization.

Chairman RIBICOFF. Without objection, your entire statement will go into the record.

Senator CRANSTON. I would like to stress one requirement that I have been urging for some time that I think is necessary to prevent co-optation by the constituency of the committee, and that is the requirement in the bill for rotating membership and the limits imposed on the duration of service by both Senators and staff. I think that is a very wise provision.

It is in the area that one might call congressional advice and consent in the conduct of covert operations that I have some difficulties with the committee bill. I see the provisions for congressional advice, but I am unclear as to where, under the bill, congressional consent comes into play.

Let me say that I feel a bit abashed in being critical of a bill into which so much time and thought have obviously been put. Much of the committee's work has been done in secret session. The authors of the bill were privy to, and their bill may well reflect, information and insights beyond my experience.

Furthermore, I am concerned to find myself engaging in what is, at least in congressional terms, a process of "instant analysis." Here

I am, less than 2 working days after introduction of a bill that has been 6 months in the making, pointing to what I believe to be its defects.

But my appearance here was scheduled before the committee bill was introduced. And I felt I would be derelict—if not irrelevant—if I were to appear and not comment on such a significant document.

Section 13(c) of the committee bill states in part:

No department or agency of the United States may engage in, directly or indirectly, any significant covert or clandestine operation in foreign countries unless and until the Committee on Intelligence Activities of the Senate has been fully informed of the proposed activity by the head of the department or agency concerned prior to the time such activity is initiated.

So far, so very good. But what happens next?

What if one or more members of the committee—what if a majority of the committee—opposes going ahead with the covert activity as planned?

I presume they express their disapproval. But what if the President or his agents disagree and want to go ahead? How does the committee stop them? What if, despite the committee's objections, the President or his agents decide to go ahead with their plan—and they don't inform the committee of their decision? What recourse does the committee have?

It would appear, from my reading of the committee bill, that the only effective recourse open to the committee is public disclosure—after first getting the approval of the full Senate.

But the public disclosure of an impending covert operation—even the threat of disclosure—is a serious matter not to be taken lightly without considering all possible ramifications. What if, for any of a number of good reasons, the committee hesitates to notify the President of its intent to disclose? Is the President justified in interpreting the committee's silence as assent? One could logically think so.

What if the committee—or the full Senate, for that matter—is opposed to the planned covert operation but feels that because of the very nature of the operation, disclosure itself could be inimical to the best interests of the United States?

How does the Senate get off the horns of that particular dilemma?

How does it stop the operation short of resorting to a remedy it fears could be as harmful—or almost as harmful—as the disease?

Chairman RIBICOFF. All I can say is that is where we earn our salaries, to try to come up with answers to those questions, Senator Cranston.

Senator CRANSTON. I hope I earn my salary by the proposal I am going to make.

I believe that if the committee or the Senate is going to blow the whistle on a projected covert operation, it should be able to do so in a manner less potentially embarrassing to the Nation and more in keeping with the Senate's deliberative and decisionmaking responsibilities.

I would say something along the following lines. I have a question about one part I am proposing. A majority of the standing committee, voting in closed session, would be sufficient to stop a proposed covert activity unless the President appealed to the Senate. In that

case, a "no" vote by a majority of the Senate, meeting in executive session, would be final. The President could not legally proceed with the plan.

Furthermore, even if a majority of the committee supported the covert plan, it would enable any three members to appeal to the Senate to vote, in secret session, to block the operation. Once again, a "no" vote by a majority of the Senate would be final and would kill the operation.

Chairman RIBICOFF. I am curious about your suggestion which would allow three members to appeal to the Senate.

Do you feel, instead of a majority, that maybe six Senators would be needed out of the nine to block an action?

Senator CRANSTON. That might be better to block. I suggest that a simple majority would be able to block the operation.

Chairman RIBICOFF. I am just thinking.

If we contemplate five of the majority, four of the minority, would you not then get into a situation where you might divide on partisan lines?

Senator CRANSTON. I am going to suggest a different makeup of the committee that would obviate that problem.

The real problem is, what if a majority votes "yes"—whether two-thirds or a simple majority, but some members of the committee, less than a majority, feel very strongly that it is a very great mistake.

I suggest what it might require is three could then call for a secret session and appeal to the Senate to reverse the decision.

Once again, if that is what is done, a "no" vote by the majority of the Senate would of course be final and would kill the operation. Once again, the President could avoid a Senate vote by agreeing to drop the project, so he should be informed if there is going to be a secret session requested, then he has the opportunity to drop it—if he is concerned about the danger of leaks when 100 Senators are advised.

This runs into present Senate rules and, actually, unless this is changed in the rules, one member of the committee can do that.

Chairman RIBICOFF. As you know, once we act, this bill goes to the Rules Committee. They have 20 days to work their will. I am sure that before we are through, there will be provisions in the bill that will involve the Senate rules.

Senator CRANSTON. Under the Senate rules, as was pointed out in the select committee's brief, a single committee member is entitled, under Senate rule 35,

* * * to request a closed session of the Senate in which he may disclose to the Senate any information of any kind. He may also use a closed session to request that the full Senate overrule a committee decision against public disclosure.

It may be well to leave it that way. If one member feels very strongly and conscientiously the operation is a mistake, he could ask for a secret session. I say perhaps there should be three where we set up a special procedure, and under it they are privy to information not available under present circumstances to Members of the Senate.

I am not certain on that point whether it should be one or three or something else.

I have one other basic problem with the committee bill.

Section 13(d) of it states that the requirement of prior notification, as dealt with in subsection (c) :

* * * shall not apply during military operations initiated by the United States under a declaration of war by the Congress or an exercise of powers by the President under the War Powers Resolution.

I had similar exceptions in my amendments, but upon reflection, I think it would be a mistake to drop the requirement of prior notification in a war powers situation.

I can easily understand the Senate no longer insisting on prior consultation and approval of a covert operation after Congress has declared war. But a President acting under his authority under the war powers resolution is a President acting alone—independent of and unchecked by Congress and free to do virtually anything he wants for as long as 60 days.

There is no compelling reason, it seems to me, for the Senate to write itself totally out of the picture at the very time its collective wisdom and judgment may be most needed.

On the case for change in the procedures authorizing covert operations, consider the recent disclosures about covert actions in Italy and Angola. If these disclosures undermine the capability of the President to conduct foreign policy, then, as Anthony Lewis has pointed out, it is a foreign policy based on secrecy and chosen in secret by the President and the Secretary of State. For the decision to assist political parties and factions in these countries had not been approved by Congress, and when the full Congress learned about Angola, it rejected the administration's intervention—54 to 22 in the Senate, 322 to 99 in the House.

Other adventures begun in secret proved to be disasters: Cuba, Vietnam, Chile.

In essence, then, what we are talking about is the covert power of the President. When the CIA has a standing covert capability, with thousands of employees and billions of unaccountable dollars—or millions of unaccountable dollars as far as CIA itself is concerned—to put it into operation, the effect is to let the President make and execute a policy for this country without the ordinary constraints of the Constitution, without public knowledge, without debate, without the limiting congressional power of the purse.

Of course, there can be irresponsible leaks, unlawful leaks. In our system, disclosure can also be a last resort against abuse of power.

Secrecy insulates authority. We should never forget that. Officials who demand secrecy are also asking for a form of unaccountable power.

I want to raise one final point. That has to do with the composition of the proposed committee and gets to the point that you were making about a 5-to-4 ratio in the committee and the danger of partisan votes. Why the fixed ratio of five majority, four minority members—regardless of how the proportion of Democrats and Republicans in the rest of the Senate changes from one election to another? Why should the voters' preferences, as reflected in the political makeup of the Senate as a whole, not be reflected in this most important of committees?

No. I think it's a mistake not to allow the electoral process to work its will, and on this committee in particular.

If this proposed formula, with its fixed one-seat margin of difference in party representation, is designed to foster bipartisanship on the committee, then the mistake, in my opinion, is being compounded.

Through some unaccountable warp in our political thinking, we have come to equate patriotism with bipartisanship in foreign affairs. Politics, we say, should stop at the water's edge.

As a result, most of our major foreign policy mistakes—from the cold war to Vietnam—have had broad bipartisan support. What is worse, it was this very bipartisanship that created the climate for mistakes.

In the name of bipartisanship, many of us suspended—or at least silenced—our critical faculties. And as a consequence, the Nation stumbled, united, from one blunder to another.

The strength of our adversary political system springs from the public pooling—and the public clashing—of diverse ideas and divergent opinions, and their reconciliation in consensus. From that distillation has come, historically, a high percentage of right decisions and, equally important, a low incidence of major mistakes.

Whenever in the past we have disparaged dissent and demanded bipartisan agreement on foreign policy, we have robbed ourselves of this central advantage of the democratic process. And we have paid a heavy price for this error.

I urge Democrats and Republicans to give up the buddy system in foreign policy before we both drown.

Along these lines, I hope that representation on the proposed committee will reflect not only the ever-changing political composition of the Senate, but its philosophic and geographic distribution as well. And I hope that young Members—whether young in chronological age and/or in Senate seniority—get a fair share of the seats, as was done, I understand, on the select committee.

In conclusion, I would like to return briefly to a theme I touched upon earlier: the culpability of Congress in the CIA mess.

I do not absolve a string of manipulative Presidents. Nor do I excuse those in the CIA who sought to mislead Members of Congress. But if our intelligence agencies have been sinners, they have also been sinned against—with Congress as a principal culprit.

If some in the CIA sought to hoodwink Members of Congress, Congress for the most part allowed itself to be hoodwinked. Driven by the anxieties of the cold war, many in Congress shut their eyes to our Government's covert activities. They didn't want to see, nor to hear. Some proudly proclaimed they did not want secret briefings; they did not want to be told what was going on behind the backs of the American people.

Many in Congress were so fearful of totalitarianism they tacitly agreed to have our country employ the tactics of totalitarianism—without sensing that we risked destroying our democracy in the process.

If the CIA hoodwinked Congress, Congress in turn hoodwinked the CIA. By winks, nudges, nods and silent collusion, the CIA was allowed to assume all along that it had the support of Congress—as well as the support of the President—in what it was doing.

The CIA pretty much followed the briefings procedures laid down by Congress. And when Congress voiced no opposition to CIA opera-

tions, the agency reasonably deduced it had Congress approval. And, it apparently did have the approval of those Members of Congress who had gotten the word. But most Members of Congress never did; most were kept in the dark.

Congress, now belatedly awakening fully to its responsibility, is becoming reasonably well-informed and is demanding an end to improper or illegal operations. But we must not forget that Congress, not the CIA, was basically at fault for the defects in the briefing procedures. The CIA must not now be made the fall guy for Congress past deficiencies.

The word "oversight," as it is used in Washington, means "supervision" or "management." But "oversight," as Congress applied it to the CIA, reverted to its original, more commonplace meaning of "negligence," "omission" and "failure."

An effective intelligence operation is indispensable to our Nation's security. We must be able to gather and interpret foreign intelligence information. And in unusual circumstances, and under proper supervision, perhaps we should be able to undertake covert activities abroad. I am not yet certain whether any covert operation is appropriate during peacetime, but I do accept its appropriateness in wartime. I want to give more thought to this very sensitive issue and to consider the views of others.

Whatever decisions we finally reach, Congress must remain resolved to face up to its responsibility to exercise close supervision of our intelligence operations. Thanks to the select committee, a Congress that had been asleep at its post has at least returned to duty.

I am delighted that you are on duty here. I think this committee has an opportunity to do very important work, and I believe you will do it well. I would be delighted to answer questions.

Chairman RIBICOFF. Thank you for your contribution.

Naturally, I do respect your suggestions. As the days go by, your thoughts will be clarified and will be shifting, just as mine are from day to day, and I will not hesitate to ask you for your point of view as we go along.

Senator CRANSTON. Thank you.

Chairman RIBICOFF. Thank you very much, Senator Cranston.

Senator GLENN. I just have a couple of questions.

Would you favor a joint committee with the House or one single committee to oversee this? I gather from your testimony you would not.

Senator CRANSTON. I believe it is better to have two separate committees. There is always the danger of being co-opted, even when the staffs or Senators can only serve for 6 years. There is greater safety in having two different committees performing this function.

Senator GLENN. Assuming that, it seems we have carried the same idea to a greater extreme in what we have now, with six or eight committees having parts of this.

Do you see a danger? We are now proceeding in that direction, setting a single House and Senate Committee, it seems to me.

Senator CRANSTON. The problem with that setup was obviously there were too many other committees and they had too many other duties. They did have permanent membership, permanent staff. The risk of

co-option was there to some degree. It occurred in some of those committees.

Senator GLENN. One of the problems I felt in developing one central spot, whatever committee was going to operate would have the confidence of the intelligence community sharing ideas so they would have some place to go instead of having multiple committees to share ideas before covert actions are even brought to the formal proposal stage.

It seems to me that is where we can stop an awful lot of this.

Senator CRANSTON. My main concern is one single committee means one tight, closed system. Of course, we need plenty of tightness to prevent leaks. I would rather have the opportunity for two committees to function with different staffs and possibly different viewpoints and different alertness to the problems of this sort of activity.

Senator GLENN. If we go that route, it seems to me to make it difficult for those things which should be kept should remain secret, where very momentous matters on foreign policy and the like are being considered.

That is obviously an advantage of a single committee. We have to weigh that against things being kept too secret, of course, which is what happened in the past.

Senator CRANSTON. I grant that is a matter that has to be considered very carefully.

Chairman RIBICOFF. While the Joint Committee sounds as if that would be a good idea, one of the problems that worries me is that the problem of advise and consent is really a Senate function and not a House function. One of the great problems you would have with a Joint Committee concerns the question of a disagreement. What are the frames of reference in the determination of whether it goes to the House or Senate for an override?

This is a great problem.

I am trying to approach this very responsibly without any preconceived ideas. As the testimony comes in, there is a shifting of thoughts and ideas, and unquestionably, there will be, down to the final day. That is one of the questions we have facing us when we hit the knotty problems.

Maybe those problems are what is bothering you, why you want a separate committee instead of a joint committee.

Senator CRANSTON. That is part of it.

A lesser consideration, but nonetheless a consideration, relates to the time problems you were discussing when Senator Nelson was testifying.

You have immense difficulties in moving very quickly to get a bill enacted. I think it is going to be very difficult to get a good oversight procedure established this year, let alone under the deadlines you have, given all the difficulties and obstacles and opposition.

Chairman RIBICOFF. This is where your unique experience and sensitivity comes into play. As I follow the press--and we will have some House Members here--there is very little reassurance that the House is interested. Certainly I think the Senate has made it clear that it is interested in oversight.

Second, if you have a bill, it can be vetoed by the President. But the Senate can pass a resolution which will bind it without requiring it to

go to the President for his signature. So if you have a bill, you run into the House problems and you do have the question of timeliness and the question of urgency. This is what concerns me with Senator Nelson's proposal of trying to do both the jobs with two separate committees—you will end up with neither. I am just thinking out loud without coming to any conclusions, but you do have these problems.

Senator CRANSTON. I think that the point you make about the Senate being able to go its own way is a very compelling aspect of it.

Chairman RIBICOFF. We can change this from a bill to a resolution and we will solve that problem.

Senator CRANSTON. If that route is not taken, I fear nothing will be done.

Chairman RIBICOFF. I, too, feel nothing will be done if we do not take that route.

Senator GLENN. Mr. Chairman, under the constitutional implications, if not the specifics of the Constitution, that the Senate has the role of advise and consent that you refer to, I think probably it is very likely that the House would agree completely to let the Senate take on this responsibility on its own.

If they did and we had a Senate committee, then that would solve many of the problems, I think. To me, that would almost be ideal and would be in greatest harmony with the Constitution or what we interpret it through the years as being the intent of the Constitution, whether it is lettered out that specifically or not.

But the fallback provision of having the Senate perform that function, the next step is a joint committee, then the separate committees, then the proliferation that goes beyond that someplace. Then we are back in the same mess that we have been in in the last few years.

Chairman RIBICOFF. This is something we are going after when we come to the markup period.

Senator CRANSTON. If I may say one further thing, I will submit an amendment to you—I do not have it in final form yet—to add a paragraph to section 14 which would be section 14(8) regarding the publishing of the overall budget figure.

Thank you very much.

Chairman RIBICOFF. Thank you very much.

[The information referred to and the prepared statement of Senator Cranston follows:]

FEBRUARY 20, 1976.

Hon. ABRAHAM RIBICOFF,
Russell Senate Office Building,
Washington, D.C.

DEAR ABE: When I appeared before the Government Operations Committee on February 2 to testify on the subject of intelligence oversight mechanisms, I promised to send you the language of two amendments that I suggested while before you. In the meantime, my Legislative Assistant, Bill Jackson, has been in touch with your staff on this matter.

However, for the record, I would like to pass along for your consideration these suggestions:

1. Section 14 of the Church bill could be amended as follows: "Section 14 (8): the annual budget of the agencies listed in subsections (1), (2), (3), and the funds spent for intelligence activities in the agencies referred to in subsections (4), (5), (6) shall be made public, in accordance with Article I, Section 9, Clause 7 of the Constitution."

Obviously, this is an attempt to make sure that Congress and the public are informed about the lump sum figures for intelligence budgets by agency.

2. Section 13(d) should be amended by dropping any reference to "an exercise of powers by the President under the War Powers Resolution."

This is suggested so as to avoid a situation in which the President has introduced U.S. Armed Forces in a region or country under the War Powers Act, about which Congress would have to be informed in 48 hours, and at the same time has introduced civilian paramilitary personnel in a region or country without a requirement for reporting such operations to Congress.

In addition to these suggested amendments, I draw your attention to a colloquy between Senator Humphrey and me during consideration of the security assistance bill on February 17. We endeavored to make clear that the Senate never intended to authorize covert operations, or to give any implicit authority that could be so construed, when it passed Section 662 of the Foreign Assistance Act in 1974. It was necessary to make this classification because the special counsel to the CIA Director, Mr. Rogovin, and others have been citing Section 662 as implying or conferring CIA authority to plan and conduct covert operations. I hope the Government Operations Committee will be careful not to adopt language in the resolution it reports that could be later cited as legislative authority for covert operations. Or, perhaps a disclaimer could be entered in the Committee report.

We're all indebted to you, Abe, for the careful consideration you're giving this sensitive issue. I look forward to reading your recommendations.

Sincerely,

ALAN CRANSTON.

PREPARED STATEMENT OF HON. ALAN CRANSTON, A U.S. SENATOR FROM
THE STATE OF CALIFORNIA

I want to applaud the outstanding work performed by the Select Committee, and particularly the suggestion put forth by a majority of the Committee to establish a new Standing Committee on Intelligence Activities.

The proliferation of existing committees, each of which has been given pieces of but none of which has ever had overall jurisdiction over U.S. intelligence activities accounts in part for Congress' failure to execute effective oversight over these activities.

And by that failure, Congress shares blame—no less than the Executive and probably more than the leaders of our intelligence community—for the deplorable and dangerous excesses that the United States has committed both at home and abroad in the name of national security.

I believe that the Select Committee's proposal gives adequate recognition to the need for a continuing role by the present relevant committees while at the same time wisely centering responsibility and accountability for oversight in a single, new committee.

I commend many other specific provisions of the Committee bill, most particularly: The requirements of rotating membership and the limits imposed on the duration of service by both Senators and staff; the imposition of an affirmative legal obligation on the intelligence agencies to keep the committee fully informed through regular and continuous briefings; and the insistence that the committee be informed of contemplated covert actions before they are undertaken.

These reforms are so self-evidently wise—at least their wisdom is self-evident as far as I'm concerned—as to require little extrapolation. Suffice it to say this:

Neither Senators nor staff should be allowed, through extended tenure, to relax the vigilance—or to lose the dispassion—which meaningful oversight demands.

Intelligence agencies have a profound obligation to provide Congress with the information it must have to exercise its constitutional responsibilities—and such an obligation must rest on law rather than on individual caprice.

And Congress must be fully consulted before the fact—not vaguely and sometimes inaccurately advised after the event—if it is to exercise the intelligent partnership in the formulation of foreign policy that the Constitution envisions.

But it is in this last area, the area one might call Congressional advice and consent in the conduct of covert operations, that I have some difficulties with the committee bill. I see the provisions for Congressional advice. But I am unclear as to where, under the bill, Congressional consent comes into play.

Let me say, before proceeding, that I feel a bit abashed about being critical about a bill into which so much time and thought have obviously been put. Much of the Committee's work has been done in secret session. The authors of the bill were privy to, and their bill may well reflect, information and insights beyond my ken. Furthermore, I am concerned to find myself engaging in what is, at least in Congressional terms, a process of "instant analysis". Here I am, less than two working days after introduction of a bill that has been six months in the making, pointing to what I believe to be its defects.

But my appearance here was scheduled before the committee bill was introduced. And I felt I would be derelict—if not irrelevant—if I were to appear and not comment on such a significant document.

Section 13(c) of the committee bill states in part:

"No department or agency of the United States may engage in, directly or indirectly, any significant covert or clandestine operation in foreign countries unless and until the Committee on Intelligence Activities of the Senate has been fully informed of the proposed activity by the head of the department or agency concerned prior to the time such activity is initiated."

So far, so very good. But what happens next?

What if one or more members of the committee—what if a majority of the committee—opposes going ahead with the covert activity as planned?

I presume they express their disapproval. But what if the President or his agents disagree and want to go ahead? How does the committee stop them? What if, despite the committee's objections, the President or his agents decide to go ahead with their plan—and they don't inform the committee of their decision? What recourse does the committee have?

It would appear, from my reading of the committee bill, that the only effective recourse open to the committee is public disclosure—after first getting the approval of the full Senate.

But public disclosure of an impending covert operation—even the threat of disclosure—is a serious matter not to be taken lightly without considering all possible ramifications. What if, for any of a number of good reasons, the committee hesitates to notify the President of its intent to disclose? Is the President justified in interpreting the committee's silence as assent? One could logically think so.

What if the committee—or the full Senate, for that matter—is opposed to the planned covert operation but feels that because of the very nature of the operation, disclosure itself could be inimical to the best interests of the U.S.? How does the Senate get off the horns of that particular dilemma? How does it stop the operation short of resorting to a remedy it fears could be as harmful—or almost as harmful—as the disease?

I believe that if the committee or the Senate is going to blow the whistle on a projected covert operation, it should be able to do so in a manner less potentially embarrassing to the nation and more in keeping with the Senate's deliberative and decisionmaking responsibilities.

Last November, while awaiting the Select Committee's recommendations, I introduced—but did not call up—three amendments to the Foreign Assistance Act of 1961. The thrust of two of these amendments may have some relevance to our present discussion.

One proposed that if any two of the six standing committees currently charged with intelligence oversight votes, in executive session, to disapprove of a specific cover operation, that operation could not be initiated. Or, if already under way, it had to be terminated.

Another of my amendments gave that veto power not to any committee or combination of committees, but to the full Senate or the House instead.

In light of the proposal to establish a single Standing Committee on Intelligence, I would suggest that this committee consider a modified amalgam of those two amendments as a possible way out of the problems I have pointed to.

I would suggest something along the following lines:

A majority of the Standing Committee, voting in closed session, would be sufficient to stop a proposed covert activity, unless the President appealed to the Senate. In that case, a "no" vote by a majority of the Senate, meeting in executive session, would be final. The President could not legally proceed with the plan.

Further, even if a majority of the committee supported the covert plan, I would enable any three members to appeal to the Senate to vote, in secret session, to

block the operation. Once again, a "no" vote by a majority of the Senate would be final and would kill the operation. And once again the President could avoid a Senate vote simply by agreeing to drop the project.

I have one other basic problem with the committee bill and, if it's any consolation, my amendments contained the same defect.

Section 13(d) of the bill states that the requirement of prior notification, as dealt with in subsection (c) :

"Shall not apply during military operations initiated by the United States under a declaration of war by the Congress or an exercise of powers by the President under the War Powers Resolution."

I had similar exceptions in my amendments, but upon reflection I think it would be a mistake to drop the requirement of prior notification in a War Powers situation.

I can easily understand the Senate's no longer insisting on prior consultation and approval of a covert operation after Congress has declared war. But a President acting under his authority under the War Powers Resolution is a President acting alone—Independent of and unchecked by Congress and free to do virtually anything he wants for as long as 60 days.

There is no compelling reason, it seems to me, for the Senate to write itself totally out of the picture at the very time its collective wisdom and judgment may be most needed.

I want to raise one final point, and that has to do with the composition of the proposed committee.

Why the fixed ratio of 5-majority, 4-minority members—regardless of how the proportion of Democrats and Republicans in the rest of the Senate changes from one election to another? Why should the voters' preferences, as reflected in the political makeup of the Senate as a whole, not be reflected in this most important of committees?

What if one party were to win, say, 70 or 80 percent of the seats in the Senate? By what logic should it be restricted to only 55 percent of the seats on the committee? To carry conjecture to an extreme, what if the minority party in some future Senate were to hold only three seats? How are they to fill the fourth slot on the committee?

No, I think it's a mistake not to allow the electoral process to work its will, and on this committee in particular.

If this proposed formula, with its fixed one-seat margin of difference in party representation, is designed to foster bipartisanship on the committee, then the mistake, in my opinion, is being compounded.

Through some unaccountable warp in our political thinking, we have come to equate patriotism with bipartisanship in foreign affairs. Politics, we say, should stop at the water's edge.

As a result most of our major foreign policy mistakes—from the cold war to Vietnam—have had broad bipartisan support. What is worse, it was this very bipartisanship that created the climate for mistakes.

In the name of bipartisanship, many of us suspended—or at least silenced—our critical faculties. And as a consequence the Nation stumbled, united, from the blunder to another.

The strength of our adversary political system springs from the public pooling—and the public clashing—of diverse ideas and divergent opinions, and their reconciliation in consensus. From that distillation has come, historically, a high percentage of right decisions and, equally important, a low incidence of major mistakes.

Whenever in the past we have disparaged dissent and demanded bipartisan agreement on foreign policy, we have robbed ourselves of this central advantage of the democratic process. And we have paid a heavy price for this error.

I urge Democrats and Republicans to give up the buddy system in foreign policy before we both drown.

Along these lines, I hope that representation on the proposed committee will reflect not only the ever changing political composition of the Senate but its philosophic and geographic distribution as well. And I hope that young members—whether young in chronological age or in Senate seniority—get a fair share of the seats, as was done, I understand, on the Select Committee.

In conclusion, I'd like to return briefly to a theme I touched upon earlier: the culpability of Congress in the CIA mess.

I do not absolve a string of manipulative Presidents. Nor do I excuse those in the CIA who sought to mislead Members of Congress. But if our intelligence

agencies have been sinners, they have also been sinned against—with Congress a principal culprit.

If some in the CIA sought to hoodwink Members of Congress, Congress for the most part allowed itself to be hoodwinked. Driven by the anxieties of the cold war, many in Congress shut their eyes to our Government's covert activities. They didn't want to see, nor to hear. Some proudly proclaimed they did not want secret briefings, they did not want to be told what was going on behind the backs of the American people.

Many in Congress were so fearful of totalitarianism they tacitly agreed to have our country employ the tactics of totalitarianism—without sensing that we risked destroying our democracy in the process.

If the CIA hoodwinked Congress, Congress in turn hoodwinked the CIA. By winks, nudges, nods and silent collusion, the CIA was allowed to assume all along that it had the support of Congress—as well as the support of the President—in what it was doing.

The CIA pretty much followed the briefing procedures laid down by Congress. And when Congress voiced no opposition to CIA operations, the agency reasonably deduced it had Congress' approval. And, it apparently did have the approval of those members of Congress who had gotten the word. But most members of Congress never did; most were kept in the dark.

Congress, now belatedly awakening fully to its responsibility, is becoming reasonably well-informed and is demanding an end to improper or illegal operations. But it must not forget that Congress, not the CIA, was basically at fault for the defects in the briefing procedures. The CIA must not now be made the fall guy for Congress' past deficiencies.

The word "oversight", as it is used in Washington, means "supervision" or "management". But "oversight", as Congress applied it to the CIA, reverted to its original, more commonplace meaning of "negligence", "omission" and "failure".

An effective intelligence operation is indispensable to our nation's security. We must be able to gather and interpret foreign intelligence information. And in unusual circumstances, and under proper supervision, we should be able to undertake covert activities abroad. I am not yet certain whether any covert operation is appropriate during peacetime, but I do accept its appropriateness in wartime. I want to give more thought to this very sensitive issue and to consider the views of others.

Whatever decisions we finally reach, Congress must remain resolved to face up to its responsibility to exercise close supervision of our intelligence operations. Thanks to the Select Committee, a Congress that had been asleep at its post has at last returned to duty.

TESTIMONY OF RAYMOND S. CALAMARO, EXECUTIVE DIRECTOR, COMMITTEE FOR PUBLIC JUSTICE

Mr. CALAMARO. Mr. Chairman, I want to thank you for inviting me to testify today. I will not read my whole statement but ask that it be submitted for the record, and I will touch on some of the important points.

I am executive director of the Committee for Public Justice, which is a civil liberties organization. Its primary work is educational. It has published and sponsored books and articles as well as conferences and public forums. My statement today represents the views of the Committee for Public Justice.

The Committee for Public Justice strongly recommends the formation of permanent congressional committees to oversee intelligence and investigative activities. The creation of such committees would be a partial response to two urgent needs facing the Congress today. The first is a need for better control over, and an end to the abuses by, agencies which conduct such activities.

The second is a general need throughout Congress for a more responsible performance of its oversight function.

Chairman RIBICOFF. Mr. Halperin and Mr. Calamaro, the committee sitting here is just composed of the chairman at the present time. I have read your statements. I have some questions I would like to ask you.

I wonder if both your statements could go into the record in their entirety as if read. I will ask these questions. If you find when I am through that there are other things that you would like to say, you will have ample opportunity to do so and I think we could accomplish much more.

Mr. CALAMARO. That is fine, Mr. Chairman.

Chairman RIBICOFF. If you prefer to read your statement—

Mr. CALAMARO. No; not at all. That is fine.

Chairman RIBICOFF. Both of you men have worked on books analyzing some of the past abuses of the intelligence agencies. Now, specifically, do you think a real intelligence oversight committee might have helped avoid some of those abuses?

These are questions for both of you. One can answer, and the other can come in, as you please.

Mr. CALAMARO. I will start, Mr. Chairman.

I think the answer is that it certainly could have helped to avoid some of the abuses. One of the instances which I cite in my statement, and it is only one of the ways it might have worked, has to do with the FBI's following its own policy manual. Its policy manual makes the distinction between preliminary investigations, by FBI field agents, and so-called full-scale investigations.

Such a distinction is necessary to help protect the rights of the people being investigated. In addition, it permits FBI headquarters to be aware, and retain control, of the Bureau's investigation.

Only when enough grounds exist is a full-scale investigation justified. A preliminary investigation may be commenced more easily, but it is strictly limited in time and scope.

The Bureau—and this was brought out by a study performed by the Comptroller General, Elmer Staats, in a study that the GAO did of the FBI—the Bureau did not follow its own guidelines. In more than half of the instances, the distinction between a preliminary investigation and a full-scale investigation was blurred.

It seems to me that it is primarily the job of the FBI and the Justice Department to supervise the Bureau, to oversee it. In the last analysis, it is the role of the Congress to oversee these agencies and determine whether the laws are being faithfully executed without transgression of people's constitutional rights and the doctrine of separation of powers.

The failure to preserve the distinction between full-scale and preliminary investigations is only one instance.

In many, many other instances where the Bureau and the CIA have failed to comply with their own guidelines, or guidelines which should be imposed. Congressional oversight would have the function of assuring that the agencies perform according to the guidelines that they are given.

Mr. HALPERIN. I think for the oversight committees to operate effectively there has to be a clear charter for each intelligence organization established by the Congress. There is now no such charter.

The FBI's domestic intelligence activities are based on a public statement of Franklin Roosevelt.

It seems to me the first function of this committee when it is set up should be to report out legislation setting out the charters of each of these intelligence organizations saying what they can do, what procedures they must follow to do those things.

CHAIRMAN RIBICOFF. In other words, your thinking is that in setting up this oversight committee, we should not try in this one bill to reorganize and set rules for everybody on that chart. But one of the duties of the oversight committee, once they get into it, would be to report to the Senate with recommendations concerning the charter or the rules of procedure or the reorganization of these agencies?

Mr. HALPERIN. I would urge you to make that directive by the Senate to the committee, then the oversight can be seeing to it that these rules are followed, that these procedures are followed, that the constitutional requirements are observed. I do not think you can have congressional oversight if there are no criterion that the organization is to follow. It is not clear what the oversight is on.

Chairman RIBICOFF. It is obvious that by March 1 we are not going to devise a set of criteria.

I am glad to have that suggestion. I have been worried about this so that we may do a responsible job. To think that by March 1 we are going to be able to set up a set of criteria and rules of procedure for all of those agencies is an illusion.

Mr. HALPERIN. I agree.

As this committee has been mandated to report by a certain date, so should others.

Chairman RIBICOFF. These are again questions for both of you.

Do you think that the executive branch tries to keep from Congress and the public more information about our intelligence program than necessary? Why do you think the executive branch tries to keep information from Congress and the public, even though essential national security interests might not be clearly involved?

Mr. HALPERIN. I do not think that there is any question that they do.

Just to take one example, there is missing from that chart¹ that you have there the largest intelligence organization in the United States, the organization that spends some \$2 billion a year for the collection of specialized reconnaissance programs.

Its name is revealed in a Senate document, a report of a Senate committee, on confidential and classified information.

If you stop any man in this building or any woman and ask them whether the United States engages in these specialized reconnaissance programs, they will tell you the answer is yes. Indeed, the United States has a treaty with the Soviet Union which both sides—in the SALT agreement—that both sides understand to mean that neither can interfere with the other's specialized reconnaissance programs.

Yet, it is the position of the executive branch of the United States that the existence of the office and the function of specialized reconnaissance programs are both secret.

I would like to argue that the reason for that has nothing to do with the national security of the United States. Neither of those things are secret.

¹ See pp. 501 and 502.

What it does is to protect that organization from congressional or public scrutiny as to the amount of money it spends, as to the procedures it uses, as to what is done with the product of this reconnaissance.

Chairman RUBINOFF. Would you like to make a comment?

Mr. CALAMARO. Mr. Chairman, I concur with Mr. Halperin's view. I think that he put his finger on it. Not only does the executive branch try to keep from Congress and the public more information about our intelligence programs than necessary, but there seems to be an effort around to depict the Congress, the Senate and the House, as if it were composed of a bunch of boys and girls who cannot do their work, cannot keep secrets, are constantly misbehaving. That is the furthest thing from the truth.

I worked in the Senate for 2 years. I have a lot of respect for the way most Senators and Congressmen perform their jobs. There is no reason to suggest that officials of the executive branch are somehow better able to keep secrets. In fact, a letter to the editor in today's Washington Post from Carl Marcy, former Chief of Staff of the Senate Foreign Relations Committee, points out that executive branch officials or former officials, are responsible for some of the most significant "leaks" we have seen.

The other side of this question therefore, is that the Congress is getting a bad reputation for something it really has not done.

Chairman RUBINOFF. On balance, how would you weigh the danger of an adequate congressional oversight against the danger that greater congressional oversight may result in disclosure of sensitive information?

Mr. HALPERIN. Let me make two comments about that.

First of all, I would say there are many cases which it is alleged that secrecy is important to an operation when in fact it is not. When you take the three covert actions that have leaked out recently, it has been widely reported in the press that we have a covert operation of supplying funds to democratic forces in Portugal. The fact that that has come out has not stopped that operation. Indeed, it has not created any great debate, because there is general consensus in the United States that we should give such aid to democratic forces in Portugal.

Now, when the fact that we were giving aid to Angola came out and we found out how large it was, Congress moved to stop that operation. The Secretary of State says he is going to come back and ask for overt aid to Angola.

Chairman RUBINOFF. Would not the administration have been better off if they had had a committee in which they discussed their thoughts about Angola so that they would have gotten the feedback so fast it would have saved them all of the embarrassment that they are now undergoing?

Mr. HALPERIN. I think that is right. As long as you let them do it in secret without having to consult with the Congress then they will try to get away with it.

The reason to keep the Angolan operation secret was not to keep it from the Angolans or the Russians or the Cubans or anyone else in Africa, all of whom knew about it. It was to keep the constitutional processes from working.

Therefore, I would say there is no justification for secrecy in that case.

Second, I would say that the things that should really be kept secret, the resolution of our cameras, the names of our spies in foreign governments and so forth, nobody is going to leak. Indeed, Congress does not need that information for effective oversight.

Effective oversight requires knowing the basic policies and the basic thrusts. It does not require Congress to even know, and certainly will have no incentive to leak the information that is genuinely secret. A lot of this dilemma is, in fact, not real.

If you look hard at what has to be kept secret, you discover that it is information that Congress does not need to perform its function. A lot of the information that the executive branch tries to keep secret, it tries to keep secret to prevent public debate and not really because it has to be kept secret on foreign policy grounds.

Chairman RIBICOFF. You gentlemen would feel that there should be a joint committee, or a separate Senate and separate House committee?

Mr. CALAMARO. Mr. Chairman, I think that two committees, really, is the preferable solution. The arguments that were cited earlier today against promoting a cult of intelligence are very important.

I might also add, going back to basics, our Constitution provides for a bicameral legislature. In most instances, when we have a committee, we have committees on both sides. There are reasons for this.

The House and the Senate function differently and weigh different values.

Remembering the point Mr. Halperin made—that the oversight committee would not just perform oversight but would also have important legislative authority to reorganize these intelligence agencies—it is important to proceed just as cautiously in this area as we do in other areas, like agriculture and finance, for example, and have two committees considering this legislation.

Mr. HALPERIN. I agree with that.

Chairman RIBICOFF. On the basis of your studies, how clear is the statutory authority for many of the intelligence activities undertaken by the FBI?

Mr. HALPERIN. They are not clear at all. The FBI does not now claim any statutory authority. It operates on the basis of an assignment of responsibilities by President Roosevelt, reaffirmed by President Truman. They have been going on that authority every since. Indeed, the Bureau now concedes that a conscious decision was made by the Roosevelt administration not to go for a congressional statutory authority because it would be controversial and there would be debate about it and they might not get that authority.

They have been operating consciously and deliberately knowing that they did not have a clear congressional mandate for a very large range of activities involving gathering intelligence on people's political views.

Chairman RIBICOFF. Do you think the oversight committee should handle all domestic surveillance, as suggested by Senator Nelson? Do you think we could do all of that by March 1?

Mr. HALPERIN. I think that the bill that the Senate Intelligence Committee has proposed, which does give the committee jurisdiction over the whole area, is the proper approach.

You are not trying to write the charters of the organizations or specify what domestic activities should be carried out under what procedures. What you are simply doing is putting the responsibility into this committee.

In my view, there should be a single committee to recommend charters for intelligence gathering by the FBI and by the CIA.

If I could just take a minute on that, Senator, I disagree very much with what Senator Nelson says. It seems to me that the two extremes, the things are totally different. On the one hand, you have the FBI doing routine criminal investigations. On the other extreme, you have the Central Intelligence Agency gathering information about the wheat crop in the Soviet Union, and it appears that there is no relationship between the two.

But if you look at the hard problems, they are all in the middle. The CIA, for example, now claims authority, right at this moment, to conduct covert collection of information in the United States from foreign sources. They claim the right to infiltrate groups that have foreign connections, to gather information from diplomats in the United States, and they currently do covert operations to gather information in the United States.

The CIA also claims the right to do security clearances on American citizens without their knowledge to decide whether or not to approach them to ask them to spy for the CIA.

Those two things raise very profound constitutional issues, in my view.

On the other hand, the FBI does embassy taps. We know embassy taps produce information on Senators, and that information goes into the files. Every Senator has a file in the FBI which has in it what they say to foreign embassies, and that seems to me to raise domestic issues as well as foreign intelligence issues.

I just do not think you can separate the two. I think it is a mistake to set up two different committees. It is important now to set up a single committee and to charge it with working out these complicated issues of the charters of the different organizations and who should do what in the United States and what should not be done in the United States.

I do not think that is a problem that cannot be done by March 1. All you are doing is setting up the committee and its structure. You are not trying to establish a charter of the FBI or a charter for these other organizations.

Chairman RUBINOFF. Mr. Halperin, you served in a number of positions in the executive branch involving national security matters, including service on the staff of the National Security Council.

How effective was the control by the National Security Council of the intelligence agencies?

Mr. HALPERIN. I know almost nothing about that because the staff of the National Security Council in general had nothing to do with the intelligence organizations. The responsibility of oversight of the intelligence organizations was in the 40 Committee of the National Security Council.

The staff of the 40 Committee consisted of one man on loan from the CIA who served under Dr. Kissinger and later his Deputy, Gen-

eral Haig, as the staff on the 40 Committee. The rest of us on the staff of the National Security Council knew that occasionally they would go into a room and lock the door and we would be told that the 40 Committee was meeting, but there was no oversight by the rest of the staff.

As far as I could tell, there was very little effective oversight by anyone, because the members of the committee were too busy to do anything and they were all staffed basically by officials of intelligence organizations.

Chairman RIBICOFF. Should there be an Inspector General, or General Director, whichever you would want to call him, separate and apart from the Director of Central Intelligence who also heads up the Central Intelligence Agency?

Should that be a different person, in that box, with the oversight of all the intelligence community who reports to the National Security Council and the President and also the man who would be the liaison between the Executive and the oversight committees?

Mr. HALPERIN. I think there are two different functions here. One is a White House official with overall responsibility to worry about the management and the budgets of the intelligence organization and be a liaison to the intelligence committee on that issue. I think there should be such an official in the White House separate from the Director of the CIA. I think there is a separate function making sure that these intelligence agencies obey the law, making sure that they stick within their charter and the Constitution. That is a function that I would put in the Justice Department. I think it is important that there is an official at the Justice Department given by the Congress the responsibility to see that the intelligence organizations obey their charter.

Chairman RIBICOFF. No one in the Justice Department is doing that?

Mr. HALPERIN. Nobody is doing it now, and nobody can do it until Congress gives him or her the responsibility and authorizes by law that that person has access by law to the materials of the intelligence organizations.

Now what happens when Justice starts investigating something, the CIA or FBI says you cannot get into that. It is too sensitive, we cannot make that public for a criminal investigation, so please stay out of it.

Congress largely has the responsibility to put it in an official of the Justice Department so that he has access to information that is needed to conduct an investigation.

Chairman RIBICOFF. Gentlemen, do you have any comment that you want to make on any phase of this? I am open for your comments.

Mr. CALAMARO. Senator, I would just like to say, in seeing the statements that were delivered before this committee, I see the emergence of a red herring that should be spotted right away. That is the notion that close oversight by the Congress of the executive branch is somehow something that would violate the doctrine of separation of powers. I do not think it is so.

I have cited a couple of highly respected constitutional law authorities in my statement. The quoted portions suggest quite strongly that it is not so. What they say is that Congress has the power, with the

power of the purse, to put an end to all of these activities. Indeed, Prof. Charles Black from Yale is very colorful and argues that the Congress could reduce the President's staff to one Secretary and put the White House up at auction. There is not much doubt that, by cutting off funds, the Congress could put an end to the FBI and CIA altogether. But to suggest that the Congress choice is either to put an end to the FBI, CIA and other agencies, or else to let them go on doing whatever they want to do, with no oversight, is nonsense.

Chairman RUBINOFF. You do not feel there is any constitutional problem of separation of powers that we are interfering with the Executive and taking away its powers?

Mr. CALAMARO. I suppose it is conceivable that a committee could abuse its duty and subvert its mandate, but I have not seen any suggestion in any of the legislation, particularly in the Church bill, I have not seen any suggestion or any reason to believe that the committee would do that. In addition there is no reason to operate on the assumption that the Congress of the United States is going to disobey the law and violate the Constitution.

Mr. HALPERIN. I would just make one final comment on the secrecy issue. I think it is important to try to get as much understanding as the committee can of basically the arbitrary and capricious nature of the executive branch classification system.

Let me give two examples.

As you recall, the House Intelligence Committee had a major constitutional confrontation with the President because they released the four words—and improved communications protection, or something—which had to do with what the Egyptians had done just before the outbreak of the Yom Kippur war and the President sent an Assistant Attorney General to demand the return of every document in the possession of the committee and said that he would not give them any more information.

It has since come out, in a book on Kissinger by the Kalb brothers there is a full description of that episode reporting that the facility picking up the information is an American intelligence facility in Iran. What it picked up was the fact that the Egyptians had turned off most of their codes and were only using their most highly sensitive code, so the details of that—which one might argue is sensitive, because it would embarrass the Iranians, it showed we knew precisely what was going on, had already been revealed, obviously by an official in the executive branch, because the book was written before either of the intelligence committees started, to the Kalb brothers who were writing a book about the Secretary of State and nothing had happened.

The Kalb brothers were not attacked, there was no investigation, the security of the United States went on.

When the House Committee chose to publish a very attenuated version of that that gave none of the facts or sensitive information about the country or so on, there was a constitutional crisis created and the House was told it was behaving irresponsibly.

The second example I would give here is the three documents that the Senate Intelligence Committee has published over the objections of the President and the executive branch, the assassination report, the report on Chile, and the report on the domestic abuses of the CIA

involving Cointelpro, particularly the activities directed toward Martin Luther King.

In each case before these documents were made public there were the most serious warnings by the President and other high officials that it would jeopardize the national security of the United States, the United States would be vastly embarrassed abroad, it was not in the interest of the United States to make those documents public.

I would urge you now to look at these documents that have been made public from that perspective and ask yourself—and I would urge other members of the committee too—as to whether they want to leave the decisions as to what is to be made public to the people whose view it is those documents should not be made public and it really jeopardizes national security.

In my view, there is nothing in those documents that harms national security. What it shows you is the motives, that is the desire to avoid embarrassment, the desire not to have to defend unpopular policies rather than my view where the only proper procedure is to balance the public's right to know against the general requirements of national security.

Mr. CALAMARO. Mr. Chairman, one other thing.

In designing this oversight committee, it is not enough to give this committee the power to oversee. They must be given the duty to do so. It is an important distinction and it is a distinction that goes to the root of why, especially in this sensitive area, congressional oversight has been insufficient.

In my statement, I refer to an incident that many of us know about. In 1961 Senator John McClellan had just assumed the chairmanship of a subcommittee which oversees the FBI. Senator McClellan decided to ask FBI Director Hoover to come before his subcommittee and testify. What happened was that Mr. Hoover politely declined.

When Senator McClellan apparently insisted, Mr. Hoover suggested that they have lunch together.

For whatever reasons, reasons I do not know about, Mr. Hoover did not testify. When this came out in the news a little while later, Mr. Hoover made an appearance before the subcommittee at a special closed session.

There are tremendous political pressures on Congressmen and Senators not to get these hot potatoes, not to get handed certain bits of information and not to displease what seems like very powerful czars in certain agencies. Some of that has to be changed. Their powers have to be changed.

It is also important that Congress not be given a choice about oversight, but be required to tell certain agency heads to testify every fixed period of time on at least certain pre-determined subjects.

That way no one has any incentive to try to pressure the Congress, and to try to avoid presenting that information.

Chairman RIBICOFF. Gentlemen, I do appreciate your coming. Again, my apologies for interrupting your testimony.

Mr. HALPERIN. Thank you for the opportunity.

Mr. CALAMARO. Thank you very much.

[The prepared statements of Mr. Halperin and Mr. Calamaro follow:]

PREPARED STATEMENT OF MORTON H. HALPERIN, DIRECTOR, PROJECT ON NATIONAL SECURITY AND CIVIL LIBERTIES

Mr. Chairman, it is a great privilege to be invited to testify before this committee on the difficult questions relating to Congressional oversight of the intelligence community. I should add that I speak, as you requested, on my own behalf and not in the name of the organizations—the American Civil Liberties Union and the Center for National Security Studies of the Fund for Peace—with which I am now associated.

This committee has already conducted a searching inquiry and I will not attempt to comment on many issues which have already been thoroughly explored. Rather I propose to take this opportunity to comment on a few issues which may not have as yet been given the full consideration that they deserve. I will at the same time be brief.

It is important to recall why these hearings are being held and why there appears to be consensus on the need to improve Congressional oversight of the intelligence agencies. It is not because of excessive release of information or concern about policy judgments; rather it is because the intelligence agencies of the United States government engaged in systematic and sustained programs which violated the laws of the land, the Constitution, the charters of the Agencies, and the ideals which the United States stands for in the world. These were not mere aberrations; they were programs which went on year after year to read our mail and our cables, to intercept our phone conversations, to enter our homes without warrants, to compose and distribute false propaganda, to interfere with the lawful political activities of our citizens, to spy on the lawful anti-war and other political groups in our society, to overthrow democratically elected governments abroad. All of these activities were part of regularly approved programs which went on over long periods of time, often with the approval of Presidents and other high level officials and in some few cases with the knowledge of some members of Congress.

It is not enough to say that times have changed, that it will not be done again. Congress must legislate changes in the structure of the intelligence community and in the scope of civil and criminal penalties. And it must, as this committee is seeking to do, create effective oversight procedures.

It is important to keep in mind in developing such procedures that many of the abuses arose at the border between domestic intelligence and foreign intelligence. The NSA cable monitoring was in part a response to requests from the FBI and other domestic agencies. The CIA mail opening program performed a counter-intelligence function mainly assigned to the FBI. CHAOS began as an effort to learn about the foreign connections of American anti-war activists and ended as a program gathering information in the United States about their domestic activities. It is imperative that a single committee have jurisdiction over all national and domestic intelligence collection. This committee has been told and will be told again that such a broad jurisdiction, particularly if it includes authorization authority, will be extremely inconvenient for the budgeteers. No doubt it will be, but it is also essential for effective oversight. At the same time, it is important that committees with responsibility generally for Defense, Foreign Relations, and Justice be free to inquire into intelligence matters within their jurisdiction.

Let me say a few words about the vexing issues of secrecy, leaks, and authorized disclosure of intelligence information.

Some of the testimony before this committee could leave the mistaken impression that the problems of secrecy arise only when information is given to the Congress which then leaks it. The most serious problems occur within the executive branch itself. Hundreds of people within the executive branch have the authority to classify information. That authority is used routinely to keep information secret precisely to prevent public and congressional debate. Even when it is kept secret on more legitimate grounds, little if any weight is given to the countervailing importance of public and open congressional debate. At the same time the executive branch leaks and leaks so badly as to make the small amount which comes from the Congress insignificant.

Whether it is a source of pride or not, it appears to be the case that the leaks relating to the domestic activities of the CIA came not from the small number of members of Congress who knew about the abuses, but rather from the much larger number of those in the executive branch who were witting.

Congress and the public should not, in my view, be dependent on Presidential decisions or bureaucratic leaks to secure the information which it needs to perform its constitutional functions. It is essential that the oversight committees in each house have clear authority to obtain all of the information necessary to perform their functions. Nor should the congress subject itself to the security clearance or classification systems established by the President for employees of the executive branch. Congress is in no way bound by the classification stamps put on documents by hundreds of officials of the executive branch. It cannot "declassify" such documents but surely it has the power and must exercise the responsibility to make public information which in its judgment should not be kept secret.

The Senate Select Committee on Intelligence has in my view pioneered in dealing with this problem in a responsible manner. It has given the intelligence agencies ample warning of its intention to make information public and listened carefully to its objections. In most cases compromises could be worked out which permitted the information essential to informed public debate to be made public while protecting genuine secrets. Where accommodation could not be reached the President was consulted and given a chance to make his views known to the committee. The committee then made its decision acting with power delegated by the Senate and on one occasion referring the matter to the full Senate.

That system has worked remarkably well. Despite the large volume of very sensitive material made available to the committee and its staff, there has been only one leak, and that relating to privacy and not national security. The committee has also been able to put before the public the essence of the matters it has been investigating without jeopardizing national security. I would urge members of this committee to examine the several reports released by the Senate Committee and compare them with the dire predictions and descriptions by the President and other executive branch officials before they were released. Such an exercise would provide a valuable insight into the criteria by which the executive branch draws the balance between requirements of secrecy and the public's right to know.

It is true of course that some leaks do come from the Congress and the other body seems in fact to have some greater difficulties in this regard. However the Senate Committee has a remarkable record and has established constitutional and responsible procedures. I would urge you to build on these in establishing a Senate Intelligence Committee.

Mr. Chairman, that completes my remarks. I have taken the liberty of attaching to them a summary of a report prepared at the Center for National Security Studies on the Abuses of the Intelligence Agencies. Since it elaborates on some of the points made briefly in my statement, I submit it as part of the statement and ask that it be included in the records of this hearing.

PREPARED STATEMENT OF RAYMOND S. CALAMARO ON BEHALF OF THE COMMITTEE FOR PUBLIC JUSTICE, ON LEGISLATION TO IMPROVE CONGRESSIONAL OVERSIGHT OF INTELLIGENCE AGENCIES

Mr. Chairman, Senator Percy, thank you for inviting me to testify here today. I am Raymond S. Calamaro, a lawyer and Executive Director of the Committee for Public Justice, or CPJ. This statement represents the views of the CPJ.

The CPJ is a civil liberties organization. Its primary work is educational. It publishes and sponsors books and articles as well as conferences and public forums. CPJ publications most relevant to today's hearings are *Investigating the FBI*¹ and *None of Your Business, Government Secrecy in America*.²

The CPJ strongly recommends the formation of permanent Congressional committees to oversee intelligence and investigative activities. The creation of such committees would be a partial response to two urgent needs facing the Congress today. The first is a need for better control over, and an end to the abuses by, agencies which conduct such activities. The second is a general need throughout the Congress for a more responsible performance of its oversight function.

¹ Watters, Pat and Gillers, Stephen (eds.), *Investigating the FBI* (New York: Doubleday and Company, 1973) (New York: Ballantine Books, Inc., 1974).

² Dorsen, Norman and Gillers, Stephen (eds.), *None of Your Business, Government Secrecy in America* (New York: Viking Press, Inc., 1974) (New York: Penguin Books, 1975).

The key points of my statement are summarized below. Of these, I call special attention to point 6. It recommends that the duties of the oversight committees and the intelligence agencies be specified and made mandatory rather than discretionary. In other words, as I explain in detail below, representatives from the intelligence agencies should be obliged by law to testify and otherwise report to the intelligence committees, at fixed intervals of time, on certain specified subjects. The subjects—*e.g.*, surveillance, data collection, retention and dissemination—should be carefully chosen to require that Congress is *necessarily* informed of possible abuses by intelligence agencies. Of course, no perfect formula or mechanism can be prescribed to guarantee effective oversight, but this recommendation, if adopted, makes it more likely.

SUMMARY

1. Creation of oversight committees is a necessary step, but not by itself sufficient, to end abuses by intelligence agencies. More is needed.
2. The legislation should establish, rather than one joint Congressional committee, separate committees in each house of Congress.
3. The new intelligence committees should have legislative authority over bills, resolutions, etc., concerning our so-called intelligence agencies and concerning the intelligence activities of any other agencies.
4. Such legislative authority should extend to legislation which would authorize appropriations relating to the intelligence programs of our intelligence agencies and the FBI.
5. The new intelligence committees should have a broad charter to oversee all intelligence activity by our government.
6. The committees' oversight functions should, to the greatest extent possible, be specified in law and made mandatory rather than discretionary.
7. The intelligence committees should have "rotating" chairmen, as that concept is set forth in S. Res. 157 which is presently pending before the Senate Rules Committee.
8. The legislation establishing intelligence committees should require a comprehensive, continuing study of the agencies involved and recommendations concerning the reorganization of those agencies or parts of them.
9. The intelligence committees should operate under a procedure permitting their members and staff access to all information necessary to perform their function completely and effectively. Furthermore, a procedure should be established whereby either House of Congress, upon recommendation of one of the intelligence committees, could release any information in its possession.
10. An overriding duty of such committees—in performing their legislative, authorizing and overseeing function—should be to assure that intelligence agencies neither jeopardize individual rights nor our Constitutional separation of powers.

INTELLIGENCE COMMITTEES ARE ONLY THE BEGINNING; MORE IS NEEDED

Mr. Chairman, there can be no doubt that a record has been made of abuses by the intelligence agencies. I need not repeat it here. That record is laid out in staggering detail in the hearings and reports of the Senate and House Select Committees on Intelligence Activities, the so-called "Watergate Committee," the Intergovernmental Relations Subcommittee of this Committee in December of 1974, and in books like *The Abuses of the Intelligence Agencies*, edited by Jerry J. Berman and Morton H. Halperin,³ *Cointelpro*, edited by Cathy Perkus,⁴ and our own *Investigating the FBI*. All this evidence makes it clear that reform is absolutely necessary.

Creating Congressional committees to oversee the intelligence agencies is not the whole solution here. It is the first step, although other reforms of these agencies are necessary. For example, the public deserves to know much more about the so-called "intelligence community." The Government still officially denies the existence of the National Reconnaissance Office, charged with running our spy satellites, even though its existence is widely known, and the spy satellites were

³ Berman, Jerry J. and Halperin, Morton H. (eds.), *The Abuses of the Intelligence Agencies* (Washington, D.C.: The Center for National Security Studies, 1975).

⁴ Perkus, Cathy (ed.), *Cointelpro, the FBI's Secret War on Political Freedom* (New York: Monad Press, 1975).

even the subject of certain SALT agreements. In fact, the Russians probably know more about the NRO than the American public does.

In other words, how can we hope to *oversee* the intelligence agencies when we cannot yet *see* them?

Forming the intelligence committees is the logical first step because many of the other necessary reforms can be handled by the new committees as soon as they are formed. This is one reason why the new committees need to have the appropriate legislative jurisdiction.

Another necessary reform concerns reorganizing the agencies themselves and rewriting their charters. Many experts believe, for example, that the CIA's role should be limited to collection and analysis of information, while the FBI should not be in this business at all unless it is investigating a crime. It has been suggested that certain functions of the CIA be placed in the State Department. Another view, offered by respected journalists of the stature of I. F. Stone and Gary Wills, is that the CIA should be abolished. Historian Henry Steele Commager has said that if the CIA cannot be cured it should be abolished.

We need not resolve questions like this today, but only recognize their importance and affirm the necessity of the new committees studying these urgent issues—with an emphasis on the protection of individual rights and separation of powers—and reporting their recommendations.

OVERSIGHT, A NEW APPROACH

Anyone advocating the formation of new Congressional committees must ask himself what is the likelihood that the committees will actually accomplish what they are created to do instead of being ineffectual and merely adding another layer to the congressional bureaucracy, or even "institutionalizing" the abuses. This question is especially pertinent where oversight is intended to be a primary duty of the committee. Oversight of the executive branch has been called "Congress' neglected function."⁶

It is not as if Congress has not attempted to improve its performance of this function. The Legislative Reorganization Act of 1946 requires each standing committee to "exercise continuous watchfulness of the execution by the administrative agencies concerned of any laws, the subjection matter of which is within the jurisdiction of such committee."⁷ A similar statement of goal was reaffirmed in the 1970 Act.⁸ The problem, according to Professor Morris S. Ogul of the University of Pittsburgh, is that Congress has set an unreasonably high expectation for itself—one that it cannot attain—and that there exists among Congressmen "an imperfect will to act."⁹ Among the factors suggested by

Providing "a legal basis for committee activity..."⁹

With these views in mind, I suggest that the key to establishing an effective oversight mechanism is to *require* the performance of certain reasonably calculated duties by the committee members and the representative of the agencies involved.

The advantage of having certain oversight duties fixed in law and non-discretionary is that it removes some of the difficult political pressures faced by legislators when the subject of legislative review is controversial or when the agency involved attempts to shield itself from Congressional review. Writing in *Investigating the FBI*, Walter Pincus provides an excellent case in point:

"The FBI's unique budgetary situation must be attributed to a number of factors, not the least of which is the Bureau's almost sacrosanct status in the halls of Congress. Until 1971 Director Hoover rarely found it necessary to appear before more than one Appropriations Committee. Every other department or agency director—including the CIA most years—had to put in an appearance before both the House and Senate Appropriations Committees. But Hoover took the position that since the House had always granted him all the funds requested, he had no reason to appear before the Senate Committee.

"Senator John McClellan became Chairman in 1961 of the Senate subcommittee which handles the over-all Justice Department budget including that of

⁶ Bibby, John, "Oversight: Congress' Neglected Function," in Laird, Melvin (ed.), *Republican Papers* (New York: Praeger Publishers, 1968).

⁷ Section 136, Public Law 79-601.

⁸ Section 118, Public Law 91-510.

⁹ Ogul, Morris S., "Legislative Oversight of Bureaucracy," published in *Committee Organization in the House, Panel Discussions*, Vol. 2, part 3, p. 709 (Washington, D.C.: U.S. Gov't Printing Office, 1973).

⁹ *Ibid.*, p. 709.

the FBI, and pressed for a Hoover appearance that year. According to both FBI and Hill sources, the Director declined and eventually the matter was settled amicably over lunch with an understanding that the Director would not be 'invited' to appear and thus not placed in the position of 'refusing.'

"In June, 1971, both an NBC television program and a newspaper series on the FBI made the point of Hoover's non-appearance before the Senate committee. On June 24, weeks after this criticism, Hoover made his first appearance before McClellan's subcommittee at a special closed afternoon session that followed immediately after the appearance of Attorney John Mitchell."¹⁰

Had the late Mr. Hoover been required by law to testify and report thoroughly on certain aspects of his bureau's conduct, the Senator would have had no choice but to insist upon Mr. Hoover's appearance.

S. 189, introduced January 16, 1975 by Senator Nelson and presently before the Senate Government Operations Committee provides a useful example of this principle. Section 4 of that bill requires thorough testimony, at least once per year, from intelligence agency heads on all surveillance and investigations carried out by their respective agencies. Comptroller General, Elmer B. Staats, in his testimony before a House Judiciary Subcommittee last year,¹¹ illustrated the importance of reporting such facts. The FBI, in its policy instructions to field agents, makes a clear distinction between preliminary and full-scale investigations:

"Investigations can be initiated either at the preliminary (inquiry) or full scale level, depending on the adequacy and sufficiency of the available facts and circumstances.

"According to FBI policy, a preliminary investigation may be undertaken when the subject's involvement in subversive or extremist activities is questionable or unclear and is to further define his involvement and determine whether a statutory basis exists for a full investigation. A preliminary investigation is supposed to be limited to a review of public source documents, record checks, and contacts with FBI established sources. The Manual of Instructions states that a preliminary inquiry may last no longer than 90 days by which time the field office should have determined whether a basis exists for continuing the investigation. If the investigation is to continue, the field office must present the facts of the case to FBI headquarters so headquarters can be advised of the need to continue the investigation."

Despite this clear policy, the GAO found that most preliminary investigations lasted more than 90 days, and the distinction between preliminary and full-scale was blurred. As a result, Mr. Staats testified, "Headquarters is unaware of a large percentage of the intelligence investigations being conducted and has only limited control . . . over such investigations."

Specific reporting requirements should be statutorily required, and oversight duties should be specified, in categories besides surveillance and investigations. An example of another such category is the retention and dissemination of records. There are many other categories as to which an oversight committee will need to get regular and complete records. If those categories are not thoroughly spelled out in legislation creating the committees, it is imperative that the committees—once they come into existence—be required to report a bill or resolution which specifies the areas of oversight.

OVERSIGHT OF THE INTELLIGENCE BUDGET

Another category as to which strict oversight must be required is budget expenditures. Article 1, Section 9 of the Constitution requires a public accounting of all government expenditures. The Association of the Bar of the City of New York, in a March, 1975 report by its Committees on Civil Rights and International Human Rights,¹² stated:

"These activities [e.g., covert foreign political or paramilitary operations, the compilation of dossiers on about 10,000 American citizens, insertion of agents

¹⁰ PinCUS, Walter, "The Bureau's Budget: A Source of Power," in *Investigating the FBI*, *op. cit.*, pp. 81-82 (Ballantine ed.).

¹¹ Staats, Elmer B., "Statement before the Subcommittee on Civil Rights and Constitutional Rights, House Committee on the Judiciary, on Domestic Intelligence Operations of the Federal Bureau of Investigation," Sept. 24, 1975.

¹² "The Central Intelligence Agency: Oversight and Accountability," by the Committee on Civil Rights and the Committee on International Human Rights (New York: The Association of the Bar of the City of New York, 1975).

into 'American dissident circles'—quoting CIA Director Colby] have been facilitated by the extraordinary statutory scheme under which the CIA operates. Its budget is exempt from legislative review, a privilege shared by no other federal agency, and its activities may be any that the 'National Security Council directs, as long as they concern in some fashion 'national security.'"

A 1974 article in the *New York University Journal of International Law and Politics*¹³ states:

"Budgeting is Congress' definitive, practical expression of policy decisions—except in the case of intelligence agencies such as the CIA. The CIA budget, which has been estimated at between \$750 million and \$1 billion,¹⁴ . . . reflects only minimal congressional policy input. Ironically, however, it is precisely the intelligence area in which the consequences of poor judgment are potentially most serious. . . ."

In order properly to carry out their oversight functions, therefore, the new intelligence committees need to control our intelligence budget. To do this, they will need to have legislative jurisdiction over authorizations for appropriations for the intelligence agencies and the intelligence activities of other agencies. A bill proposed by Senator Church and other members of his select committee makes this recommendation. This is as it should be, for without the power to control the budget for such activities, the oversight committee would possess no sanction and therefore no real power to effect meaningful oversight.

There should be no doubt in anyone's mind that Congress has the Constitutional power to perform such oversight by controlling the budget. We are reminded of this by two of the Nation's leading experts on Constitutional law. Professor William Van Alstyne of Duke University states his own view¹⁵ and cites Professor Charles Black¹⁶ of Yale:

" . . . In answering the question as to what is left to Congress under the Constitution even after one has generously accounted for all plausible powers of the President, for instance, Professor Charles Black has quite rightly observed: 'The answer is just about everything. The powers of Congress are adequate to the control of every national interest of any importance, including all those with which the president might, by piling inference on inference, be thought to be entrusted. And underlying all the powers of Congress is the appropriations power, the power that brought the kings of England to heel. My classes think I am trying to be funny when I say that, by simple majorities, Congress could at the start of any fiscal biennium reduce the president's staff to one secretary for answering social correspondence, and that, by two-thirds majorities, Congress could put the White House up at auction. But I am not trying to be funny; these are literally true, and the illustrations are useful for marking the limits—or the practical lack of limits—on the power of Congress over the president. Last year, in an appropriations bill, they told him to stop bombing Cambodia by August 15, and he stopped. If the will had existed, they could have done much the same thing four, or six or eight tragic years ago—at any time they really had wanted.'"

A special situation exists for Congressional control of the budgets of agencies which perform *some* intelligence functions. For example, the FBI is within the Department of Justice, but the entire FBI budget cannot be attributed to so-called intelligence work. However, it is not at all unreasonable for the FBI's intelligence budget to be handled by the new intelligence committees.

The Bureau's intelligence division is one of 13 operating divisions and is divided into two branches, Counterintelligence and Internal Security. Aside from the question of whether the Bureau—and this division in particular—should continue to engage in all the intelligence activities it has been engaged in, certain portions of the FBI's budget can be readily allocated to intelligence activities. For example, salaries and equipment purchased for the Intelligence Division are

¹³ Schwartzman, Robin Berman, "Fiscal Oversight of the Central Intelligence Agency: Can Accountability and Confidentiality Co-exist?" 7 *N.Y.U. J. Int'l. L. & P.* 493 (1974).

¹⁴ The \$1 billion figure in the *Journal* article is based on 1973 estimates. Pre-release news reports of a study made by the House Select Intelligence Committee puts the annual total at more than \$10 billion.

¹⁵ Van Alstyne, William, "The Role of Congress in Determining Incidental Powers of the President and of the Federal Courts: A Comment on the Horizontal Effect of 'The Sweeping Clause,'" to be published in February or March 1976, *Ohio State Law Journal*; paper delivered to the Duke University Symposium on *Presidential Power: Sources of Growth and Means of Constraint* (Durham, N.C., January 1976).

¹⁶ Black, Charles, "The Working Balance of the American Political Departments," 1 *Hastings Con. L.Q.* 13, 15-16 (1974).

likely to be considered part of the Bureau's intelligence budget. To the extent that other expenses by the Bureau cannot be directly attributed (*e.g.*, overhead and support services), it should be possible using usual accounting methods to allocate a portion of the Bureau's budget to intelligence activities. In informal discussions with General Accounting Office staff members, I have been informed that such allocations would be similar to those routinely performed by the accountant for an ordinary business firm.

In fact, the Assistant Attorney General for Administration testified, before the House Select Committee on Intelligence on August 7, 1975, that the FBI's intelligence budget is estimated to be about \$82.5 million. According to Comptroller General Stants,

"The FBI did not have a system to continuously identify special agent time spent on investigative cases. Beginning in 1972, at the urging of the Department, GAO, and OMB, the FBI began to develop the accounting system necessary to obtain the data. The first phases should be implemented in early 1976."¹⁷

Two points are worth noting. The first is that it is reasonable to expect the Bureau to be able to estimate its intelligence budget. The second is that it is perfectly possible to design new accounting and administrative procedures to facilitate this.

Two other broad subjects come to mind which should be the proper concern of any oversight committee. The first concerns compliance with existing statutes and directives within an agency or department, and the second is a periodic review of all relevant statutes and their effect.

As an example of the first, I note the testimony of Frederick A. O. Schwarz, Chief Counsel, Senate Select Committee on Intelligence Activities, before that committee on November 18, 1975. Mr. Schwarz was testifying to the need for better oversight procedures:¹⁸

"In 1939 the FBI had and established an index called the Security Index, which was a list of individuals, both aliens and citizens—I am now quoting, 'On whom there is information available to indicate that their presence at liberty in this country in time of war or national emergency would be dangerous to the public peace and safety of the United States Government. . . .'

"In 1943, however, the Attorney General then in office, Mr. Biddle, wrote a memorandum for J. Edgar Hoover in which it instructed J. Edgar Hoover to get rid of the lists and to stamp on each document in which a person had been given a classification for the purpose of being locked up, the following legend: 'This classification is unreliable. It is hereby cancelled. It should not be used.' Attorney General Biddle told J. Edgar Hoover that after full reconsideration of these classifications, 'I am satisfied that they serve no useful purpose, there is no statutory authorization or other present authorization for keeping a custodial attention list of citizens. The Department fulfills its proper functions by investigating the activities of persons who may have violated the law. It is not aimed at this work as to classifying persons as to dangerousness.'

"Within a few days of that instruction, very flat instruction from the Attorney General, the Director of the FBI indicated to all FBI agents that the instruction, in effect indicated that the instruction should not be carried out. . . ."

OVERSIGHT BY THE JUSTICE DEPARTMENT

Mr. Schwarz also testified about a different case where the problem was not as much a question of contradicting a specific direction, but of uncertainty, over a course of 20 years, about just what direction and guidance the Justice Department was providing for the FBI:¹⁹

"The final part, Mr. Chairman, is the lack of legal authority and the ambiguity, the uncertainty. This has troubled the FBI and the Attorney General's office seriously since 1972. Prior to that time there is no evidence that consideration was given to issues of whether there is legal authority except the kind of hint you get in that 1938 memo [of Mr. Hoover's] where they say let us not go to Congress, because if we seek a statute people are going to get upset about this kind of spying on Americans.

¹⁷ Staats, Elmer, *op. cit.*, in Appendix III.

¹⁸ Schwarz, Frederick A. O., "Testimony before the Senate Select Committee to Study Governmental Operations With Respect to Intelligence Activities," Nov. 18, 1975, pp. 1664-65.

¹⁹ *Ibid.*, pp. 1674-75.

"But in '72 and in '73, the Bureau did focus on the problem. They wrote in 1973 to the then Attorney General saying we are very concerned about whether we have legal authority to act in these intelligence areas. They indicated then that the theory which had been used for the thirty years, which was the rather ambiguous and vague executive orders, many of which are secret from Presidents Roosevelt and Truman, and Eisenhower, at least. Those had been the bases on which the Bureau said they can go ahead and spy on the people. Really those orders just said look at subversives. They had no real content to them. They had certainly nothing about tactics and activities, no specificity."

Clearly, an oversight committee should ensure a more firm and responsible form of oversight by the Justice Department itself over the FBI.

STATUTORY REVIEW

Another important task for an oversight committee is periodically to review all statutes within its subject matter. For example, there is a presently existing section of the U.S. Code which, on its face, appears to make so-called "covert operations" a federal crime, a felony, in fact. Section 960 of Title 18 states that: "[w]hoever, within the United States, knowingly begins or sets on foot or provides or prepares a means for or furnishes the money for, or takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony district, or people with whom the United States is at peace, shall be fined not more than \$3,000 or imprisoned not more than three years or both."

The statute itself provides no exception for government personnel, and the National Security Act of 1947 contains no language to exempt the CIA from the scope of Section 960. Indeed, the legislative history of the National Security Act contains virtually no evidence to indicate that Congress consciously authorized the CIA in any covert operations abroad other than the gathering and protecting of intelligence information.

It also seems doubtful that the President can waive application of Section 960. In 1806 a federal court rejected the defense that the President knew of and approved the accused's activities. The court declared, "The President of the United States cannot control the statute, nor dispense with its execution, and still less can he authorize a person to do what the law forbids. . . ." ²⁰

Although this statute is very old—it was originally enacted in 1794—it has been applied as recently as 1971. Despite its clear language, it was ignored by the Rockefeller Commission's report on CIA activities ²¹ and the more recent Church committee interim report on alleged assassination plots. ²²

I am not now arguing that this section does or does not apply ²³ to covert activities. However, it clearly may be interpreted to be relevant to such activities, and Congress has an obligation to explain publicly why the section does or does not apply. The oversight committee should take the lead here.

Recent revelations have spelled out a situation where many of our most important questions of foreign policy have been made in secret by secret agencies. Establishing these new intelligence committees is an attempt to end this state of affairs. A further step is to ensure, through proper interaction between the new intelligence committees and the Foreign Relations Committee in the Senate and Foreign Affairs Committee of the House, that our intelligence activities are determined by our foreign policy and not vice versa.

Two final points need to be made. One concerns "rotating" chairmen and the other pertains to separate committees in each house of Congress.

ROTATING CHAIRMEN

The idea of rotating committee chairmen, as it is set out in S. Res. 157, is one which should be adopted for all committees of the Congress, but is especially important for these new intelligence committees. That resolution was described by its sponsors, Senators Nelson, Hatfield and Gary Hart, in a June 3, 1975 "Dear Colleague" letter:

²⁰ *United States v. Smith*, 27 Fed. Cas., p. 1192, No. 16, 342a (C.C.N.Y. 1806).

²¹ *Report to the President by the Commission on CIA Activities within the United States* (Washington, D.C.: U.S. Govt. Printing Office, 1975).

²² *Alleged Assassination Plots Involving Foreign Leaders, an interim report* (Washington, D.C.: U.S. Govt. Printing Office, 1975).

²³ Calamaro, Raymond S., Paper, Lewis J., Angus, Jeffrey, "Covert Operations May Be Federal Crimes" *The Washington Post*, June 21, 1975, p. A13 (Washington, D.C.).

"Under our resolution, the senior majority party committee member would serve for a four-year term; then the next-most-senior member would serve for four years; etc. The effect of reforms like those adopted by the Democratic Caucus is preserved by a provision which requires the otherwise eligible Senator to be approved by his party as chairman.

"The resolution does not in any way affect the way subcommittee chairmen are selected, nor does it limit their tenure. In this way, the Senate can continue to avail itself of a Senator's expertise in a particular subject matter."

One need not be a political scientist to understand that a special relationship tends to develop between the members of an oversight committee and the agency representatives with which it deals. This is not necessarily bad. In fact, to the extent that this relationship fosters an open, forthright habit of communication between the agency heads and committee members, it is very desirable. What should be avoided, however, is a tendency whereby agency representatives—particularly those from the intelligence agencies, who deal with sensitive and secret information—find themselves reporting to a chairman, rather than to a whole committee or subcommittee. As long as procedural safeguards exist to handle secret information, there is no reason why a chairman should be specially briefed or otherwise informed. By rotating the chairmen this syndrome becomes less likely. It is also important to establish procedures which ensure that oversight is conducted by the whole committee or oversight subcommittee, not by one member.

Even though S. Res. 157 only applies to committee chairmen, a similar rotation procedure should be adopted by any oversight subcommittee, for reasons stated above. In addition, my own view is that a two-year term as chairman is preferable to a four-year term, particularly for the intelligence committees.

Changing chairmen in this way may have another benefit, as a sort of dividend. It may encourage a committee member who has served his or her term as chairman to seek a different committee assignment, without being required to do so. Thus, a Senator or Congressman who is pleased with his work and who has gained valuable expertise might be likely to keep his assignment. Another committee member who believes he would prefer working on a new committee would not feel as bound to stay because of his time invested on the ladder of seniority.

TWO SEPARATE COMMITTEES

Rather than a joint intelligence committee, there should be created one such committee in each house of Congress. Our Constitution prescribes a bi-cameral legislature. The two houses of Congress were intended to function differently, to serve different purposes and interests. In practical terms, this requires separate committees, permitting each house to conduct its business. In almost all instances where committees with legislative authority exist, one exists in each house of Congress. I can see no reason for treating the new intelligence committees as following an exception rather than a rule. Furthermore, if the choice is between one or two committees with legislative authority, it is preferable to have two. If we insist normally on the scrutiny of two committees over tax and agriculture legislation, for example, we should do the same in this important area. Indeed, we should proceed at least as cautiously in these critical matters of intelligence as in others before the Congress.

It is important to emphasize that this statement is limited to the issues pertinent to forming an oversight committee. There are many crucial substantive questions concerning reform of our intelligence agencies and their practices which must soon be addressed and which are likely to be referred to these new committees, if they are formed.

This concludes my testimony. As I have already said, I believe forming these committees is a very important step, but only a first step. In a sense, Congress' most valuable work concerning our intelligence agencies will not end by creating these committees, but only begin there.

Chairman RUDOLPH. The committee will stand adjourned until tomorrow morning at 10 o'clock.

[Whereupon, at 11:45 a.m. the hearing was recessed, to reconvene Tuesday, February 3, 1976.]

OVERSIGHT OF U.S. GOVERNMENT INTELLIGENCE FUNCTIONS

TUESDAY, FEBRUARY 3, 1976

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The committee met, pursuant to recess, at 10 a.m. in room 3302, the Dirksen Senate Office Building, Hon. Abraham Ribicoff (chairman of the committee) presiding.

Present: Senators Ribicoff and Weicker.

Staff members present: Richard A. Wegman, chief counsel and staff director; Paul Hoff, counsel; Paul Rosenthal, assistant counsel; Marilyn A. Harris, chief clerk; and Elizabeth A. Preast, assistant chief clerk.

Chairman RIBICOFF. The committee will be in order.

We are privileged to have Senator Goldwater with us today. Whatever Senator Goldwater says is worth listening to. His point of view, I would imagine, is somewhat different in certain instances from Senator Church's. We welcome your testimony, Senator. You may proceed as you will.

TESTIMONY OF HON. BARRY GOLDWATER, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator GOLDWATER. Thank you very much, Mr. Chairman. It is a real privilege to be with you.

As you indicated, my views may be different, but I think that is healthy. Thank you for granting me the opportunity to testify before your committee.

Before going into the details of the legislation you are considering, I would like to make some brief general comments.

In the last few years, the Congress has attempted to exert greater influence on the nature and conduct of our foreign policy. What are the results? Two good allies, Greece and Turkey, have been alienated. Jewish immigration from Russia has been reduced. The hands of our President have been tied in the day-to-day conduct of foreign policy. U.S. intelligence is demoralized and its effectiveness greatly diminished. Our allies seriously question America's reliability, if not our collective sanity. Our adversaries take comfort in watching us tear ourselves apart.

Mr. Chairman, I have here page 1 of the Washington Post of January 7, 1976. Three headlines paint a picture of American foreign policy today.

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The left-hand column is entitled, "CIA Giving \$6 Million to Italian Centrists." In the middle, below the picture, "CIA Agent Welch Buried" with the subtitle, "Ford, Kissinger Among Mourners at Arlington." On the right, the headline reads, "Two Soviet Ships Head for Angola."

Taken together, the headlines describe an impotent giant—our Nation.

Disclosure of covert aid to Italy is the direct result of the Hughes amendment to the Foreign Aid bill adopted by the Senate on October 2, 1974.

Chairman RUBINOFF. Would it be all right with you if I interrupted you from time to time?

Senator GOLDWATER. Go ahead.

Chairman RUBINOFF. Mr. Helms, Mr. Colby, and Mr. Phillips, who speaks for a group of retired intelligence officers, all indicated their concern with having to report to six committees. Their preference was for one oversight committee.

Maybe you will testify on this issue further on, but how do you feel about one oversight committee as against the six oversight committees?

Senator GOLDWATER. My feeling, as I will discuss later, is that the legislation advocated by Senator Church is the wrong way to handle the matter of jurisdiction. My personal feeling is that the present oversight committees can function and should be made to function.

I happen to serve on the oversight committee of the Armed Services Committee. To be perfectly truthful with you, we have not done the kind of a job that you might expect an oversight committee to do, for one major reason.

Most of the highly sensitive material we do not want to know about. Because revelation of this information might damage the Nation, we have felt the constant danger of ourselves talking about it at inopportune times. Therefore, we would be better serving our country by not hearing it.

Chairman RUBINOFF. That is one of the problems.

I come to this with an open mind. I do not have any preconceived ideas.

As I said in my opening statement, I realize the seriousness of this problem. This committee wants to be very responsible in whatever action it takes.

Also, Mr. Colby, Mr. Helms, and Mr. Phillips in their testimony indicated that the entire intelligence community, whether rightly or wrongly, is under a cloud today and, as Mr. Colby said, the sooner a new oversight committee was created, the better off for everybody. Neither one of these gentlemen seemed worried about a new committee. As a matter of fact, they welcomed an oversight committee they could go to.

Of course, they have concern as to how the oversight committee should be constituted and how reliable it would be. They wanted the assurance that there would not be any leaks that there would be confidentiality.

This is complex. We are going to have to wrestle with it on this committee and on the floor of the U.S. Senate.

These three gentlemen did take the position that there should be a new oversight committee and they would welcome it, even though

none of them are a part of the intelligence establishment at the present time.

Senator GOLDWATER. I am not strongly opposed to it. I am very strongly opposed to the way that they have suggested it be set up.

One of the major problems we have had in conducting a proper oversight has been our knowledge that what the CIA has done, if it has been wrong, or what the public might consider as wrong, such as attempted assassinations, reading mail, and things like that, were done under the direct orders of President.

I think it was Mr. Helms and one or two others in testimony before our Intelligence Committee under oath answered the question, "Would you lie for the Presidency?" They all said in effect, "Yes, they would lie." So we are getting into a situation that is extremely sensitive and murky.

I do not agree with the concept that the American people should know all the details about covert action. We knew it was the policy of the U.S. Government to overthrow Fidel Castro by any and all means. Remember, during the early sixties a state of near war existed between Cuba and the United States.

What good would it have done for us to make this information available to the general public? That is a question that we have to live with. We would many times just not meet. We met principally on the budget, and what it was to be used for.

Again, many times, we would go out in the field. As I discovered on several trips to Southeast Asia, there were actions that we did not know about.

Chairman RIBICOFF. You have a basic problem when the Secretary of State, Secretary Rusk, testifies that he thought he knew what was going on when it came to basic American foreign policy, but he has been rather surprised in the last few months or a year to discover there are things that he thought he knew that he did not know. I believe it disturbs you as well as disturbing me that a Secretary of State would not know about a basic operation.

Senator GOLDWATER. We have the same testimony. You have the Joint Chiefs of Staff, the National Security Council, and all of these groups working closely with the President, feeding into our foreign policy.

So it is possible in the past, that the Secretary of State was unaware of some things in the activities of our intelligence services.

We were rather surprised to hear Secretary Rusk, whom I have the greatest confidence in the world in, testify as to that.

But I think you might have to wind up in your committee dealing with more than the question of oversight committee for the CIA, or the FBI. You may have to include them, but again you are getting into very touchy ground, the problem of unauthorized leaks of national security information.

Chairman RIBICOFF. On that—I am just thinking out loud with you, because I respect your opinion—it is obvious to me, in addition to the congressional oversight function, that much has to be done to try to reorganize the intelligence branch in the executive part of our Government. But it would be an impossibility and irresponsible to try to do it by March 1.

There are many substantive issues that are controversial in nature. What has run through my mind—I have not taken it up with the committee—is that it might be wise in the bill setting up this oversight committee that the Senate give a directive to the new oversight committee to come back by July 1, 1977, to the Senate with recommendations as to substantive matters, because I do not believe that we are going to be able to solve all of the problems that may bedevil the intelligence apparatus in a matter of 10 days.

So that I think for certain elements maybe we could go just a little slower and just think about them in more depth.

How do you react to that thought?

Senator GOLDWATER. I agree. I think you would be foolish trying to meet any deadline on any reorganization on the intelligence structure of our country.

Let me give you an example that came up yesterday in Mr. Schlesinger's testimony to the Foreign Subcommittee, of which I am a member.

We asked about the availability of academically trained people for intelligence. He said that there are not any. They do not have any schools teaching it, so that they have to rely more on the training they do in their own organization. In other words, they have to rely on internal training. On occasion they will find that the operatives, the operators, are better in their job than their bosses who may or may not be highly trained academic people.

Any of us who served in the military realize you cannot move one foot without intelligence. Of course you realize that sometimes intelligence is good and sometimes it is poor. The analytical end of intelligence is a tougher problem than its collection.

I think that our country is the equal of any other country in the collection of intelligence. We may not have the analytical capacity of other countries such as England and Russia.

So we want to study in our own subcommittee the operations of the English system. We should study the organization of MI5, MI6, and the special branch of Scotland Yard. Even though we may not have time to do it, we should get into it before we make recommendations.

I would not move fast on this. I do not think that you have to.

Let me say that after sitting through a year of this, I am convinced that we have a very, very fine intelligence service. I think that it compares favorably with the best that the world has. While evidence has shown us to be tough on occasion, we are kindergarten types compared to the KGB.

I would just beg of you not to think that you have to come out March 1 or April 1, or June 1. Our intelligence community, if we get off their backs and the media get off their backs, will slowly begin to rebuild itself. It is not as bad off as some people make it to be. I think that it can be a big help to you in arriving at decisions, if the committee chooses to consult with it.

Chairman RIBICOFF. The problem we have is that this committee has a unanimous directive from the Senate that we report a bill out by March 1 and refer it to the Rules Committee to report back by March 20.

chairman in his absence, or whoever is senior on the majority side. I believe the majority party should control the standing committee.

Incidentally, I might point out that we have discussed very briefly this particular point: Do we need all the existing agencies that gather intelligence?

There are a number of agencies collecting intelligence information. There may be too much duplication.

Also, there is a question of the DIA in relation to CIA. I think this Committee on Rules should make a very thorough study of the English system. I am somewhat acquainted with having worked in a way with them. It is the finest intelligence system to me the world has ever devised. It does incorporate more than one intelligence-gathering agency, but not a multitude. Senators are now spread very thin in our committee assignments. The provision allowing Senators to serve on the proposed intelligence committee in addition to all others is merely going to compound the problem.

We discussed the reports to the Congress.

Limiting the tenure of professional staff members to 6 years is contrary to the Legislative Reorganization Act of 1970 which is quoted in section 271.1 of the manual as follows:

Professional staff members authorized by this subsection shall be appointed on a permanent basis, without regard to political affiliation and solely on the basis of fitness to perform the duties of their respective positions.

Moreover, the best Senate staffs have at least a few persons of long service thereby providing continuity and reducing the possibility of legislative error.

I would like to emphasize the extreme difficulty that we have in this Government of getting people with sufficient intellectual background and training background to make good staff members, or even good members of any intelligence effort. They are very difficult to come by, as you will find out if you ever have to get into this.

The proposed new subcommittee would have ultimate authority to disclose any intelligence secrets by majority vote. No matter how strongly a Senator may feel about a foreign policy issue to overturn a policy through the disclosure of secrets can only lead to peril for the Nation. Such a provision may raise constitutional questions—questions I shall leave to those versed in constitutional law.

S. 2893 requires the intelligence agencies of the Government to give prior notice of the intention to carry out certain kinds of intelligence activities before they are initiated. While prior notice is required in some nonsensitive departments and agencies, I believe that intelligence by its very nature must be given special treatment. Prior notice could place the lives of agents in grave peril. And, even if lives were not in peril, prior disclosure to committees of the Congress would tend to dampen their ardor.

Of course, it would give the enemy information. This is one of our major objections to the War Powers Act which I am planning to contest in the courts. It gives to the potential enemy a knowledge of everything that we are going to do and that is no way to wage a war, or to fight.

I have some questions, that we may have touched on, and any time you want to interrupt, you go right ahead.

Here are a few.

So as a Senator and as a chairman, once I have a directive from the entire Senate I will try to move on it, to move a constructive piece of legislation by March 1—if I have the cooperation of the committee.

Then it goes to the Rules Committee, which has 20 days. My feeling is that we could get out a good basic oversight bill. There are many problems in here that I see that we could not really address conscientiously by March 1.

That is why my thought is, on many of these substantive issues that I read in the paper the House is trying to address itself to, that we could give a directive to the new oversight committee to come back after they are in operation, with some substantive recommendations by about July 1, 1977.

I am sorry to have interrupted you.

Senator GOLDWATER. If I could have my entire report put into the record.

Chairman RUBINOFF. Without objection.

Senator GOLDWATER. I will just rush on.

Under the procedures the six committees of the Congress are required to be informed of covert action. This means 50 Senators and over 120 Congressmen may receive highly sensitive information on a covert action. It also means public disclosure is almost inevitable.

I will oppose any general legislation dealing with the intelligence community which fails to provide for:

One: A repeal or a severe modification of the Hughes amendment.

Two: Criminal sanctions against any member of the intelligence community who releases classified information having voluntarily entered into a secrecy agreement.

Three: The same sanctions against any Member of Congress or staff who releases classified information.

Four: A flat prohibition against any intelligence agency revealing the name or identify of any foreign agent employed by the United States to the Congress or any of its committees or Members.

I mentioned some of the reasons why I am opposed to an intelligence oversight committee. As I say, I am not set in cement in it.

I do not think we need another standing committee. We need it like we need more inflation.

The objections to this approach—the members of the proposed committee would be appointed by the majority leader and the minority leader. This is contrary to Senate practice where appointments to standing committees are the prerogatives of the Senate Steering Committee on the Democratic side and the Committee on Committees on the Republican side.

Three: Limiting the tenure of Senators to 6 years on the proposed committee is an assault on the seniority system, and that does not bother me too much; but it inhibits the development of expertise, that bothers me.

Four: At variance with the practice of other standing committees, the proposed committee would have a chairman and a vice chairman. Also, unlike other standing committees, the chairman would be appointed by the proposed committee instead of the entire Senate.

The vice chairman, a member of the minority party, would have the authority to act for the chairman in his absence. This is contrary to Senate precedent where the ranking majority member acts for the

Should the Director of Central Intelligence be separated from the Central Intelligence Agency?

Chairman RIBICOFF. What do you say to that?

Senator GOLDWATER. I do not know.

Chairman RIBICOFF. Apparently Mr. Ellsworth indicated he should. There has been other testimony—I have personally been of the mind, looking at that box, the Director of Central Intelligence should not be the same man that operates the Central Intelligence Agency. That is my personal feeling.

Again, that is the part of the overall reorganization. Again, what worries me, if we are going to reorganize all of those boxes—and I think we should—should this not come from the oversight committee after careful consideration, after they have been in this for 9 months to get an idea of what is going on, because to reorganize that, I am under no illusion on this committee by my other experience in State and Federal government, that this is a long, arduous task and you are not going to be able to do a good job in 2 weeks.

Senator GOLDWATER. I agree.

If the U.S. Intelligence Board is to have a presiding officer independent of the CIA, what authority should he possess to coordinate the intelligence community?

Of course he has to have, in my opinion, full authority, but can he coordinate 19 agencies, and at the same time serve as the chief executive officer of the CIA?

Should the responsibility for covert action remain with the CIA? If not, where is the logical organization to house this activity?

I think you have indicated some question about this, and certainly Dean Rusk has indicated some question about it. I think that he devoted much thought to it.

Is there a real need for the Defense Department to have an intelligence analytical capability apart from the CIA?

We should consider some mechanism for isolating the clandestine services from the President, and yet at the same time seeing to it that the President and the Secretary of State get all the information they may require. We need to insulate the clandestine services so that the President or one of his staffers is prohibited from making a telephone call to get a dirty job done.

Authorization and the direction of covert actions have varied under Presidents Eisenhower, Kennedy, Johnson, Nixon, and Ford. Should there be statutory requirements as to Presidential accountability for covert action?

This gets to be a rather touchy question because if the President is charged with the formulation of foreign policy, he must be in charge of the day-to-day conduct of foreign policy. On major policy questions he should seek the advice and consent of the Senate.

Therefore, I am inclined not to think so, if we are going to permit him to have the flexibility he needs to conduct our foreign policy.

Apparently, the analytical capability of the Defense Intelligence Agency is substandard. Should the DIA be made an essentially civilian agency presided over by a general officer in order to encourage the recruitment of analysts? In such event, should the DIA be given greater flexibility in the promotion of civilians as is the case with the CIA?

The NSA was created by Presidential directive in the early 1950's. Should the NSA have a charter in the form of legislation?

As you know, it is against the law for NSA to disclose any of its secrets or any of its operations.

The counter-intelligence programs of the FBI are based on a letter written by President Roosevelt in 1939. Should the counter-intelligence activities of the FBI be sanctioned by statute?

J. Edgar Hoover did an outstanding job of reorganizing the FBI in the 1920's. He transformed the Bureau from an inefficient, politically ridden organization into a first-rate investigative force. Nevertheless, improprieties and abuse crept into the FBI during the later years of his career, raising these questions:

Should the tenure of the Director of the FBI be limited to a fixed number of years?

Should there be greater supervision of the Bureau by the Attorney General?

Should there be a statute requiring a President to request in writing, and stating his reasons for wanting, any information from FBI files on U.S. citizens?

Mr. Chairman, there is one issue about which there is no question: abuse by the Internal Revenue Service. I think that you have to get into that, too.

In the past, the IRS has provided tax information that, in one way or another, has been used for improper and illegal purposes. The so-called treaties between the IRS and the State revenue services have been part of the problem, especially where tax information has been revealed during political campaigns.

Administrative practices of the IRS have severely harrassed a number of American citizens. The safeguarding of tax information and the protection of the rights of our fellow citizens from administrative abuse deserves the most immediate scrutiny by the Executive and the Congress.

The Senate Select Committee on Intelligence Operations has devoted most of its time to abuses, which may be understandable considering the time limits imposed by Senate Resolution 21.

Any reorganization of the intelligence community, or any amendment of the National Security Acts of 1947 and 1949, should come after the most careful and deliberate consideration by the Congress.

Testimony should be taken from experts past and present in the field of intelligence. If we are to perform surgery, let it be with a very sharp scalpel and not a meat ax.

We all know the climate is different from what prevailed in 1950.

We all know the days are gone when the DCI could whisper into the chairman's ear.

In the past, there was little oversight of the intelligence community, because that was the perception of the Presidents and of the leadership in Congress. Times have changed.

If the Congress wants more oversight, the existing committees can and should be required to perform. I believe they will be responsive.

As I have said, Mr. Chairman, I may have to change my view of this matter. I have been trying to get the chairman of the Armed Services Committee to make an official subcommittee on intelligence instead of the ad hoc subcommittee that is supposed to oversee the CIA. I have not made any progress.

That is all I have, Mr. Chairman. If you have some questions, I would be very happy to respond.

Chairman RIBICOFF. Senator Weicker?

Senator WEICKER. Thank you very much, Mr. Chairman.

I am glad, Senator, that you pointed out the fact that even though the focus seems to be on past Presidents of the United States, as to what they did or did not do, that the finger really should also be pointed at the Congress. It had the power all along to go ahead and perform its constitutional duties and did not do so.

One thing that I am interested in, am I correct, in the course of your testimony this morning, you stated that the fact that assassination plans were underway was known by Members of Congress, but, chose not to make it public? Is that correct?

Senator GOLDWATER. I do not know if any assassination attempts were conveyed to Members of the Congress. I do know that some Members of the Congress were made aware that it was the policy of the U.S. Government to promote the overthrow of the regimes of Fidel Castro and Rafael Trujillo, for example.

Senator WEICKER. In other words, they were known to certain of the oversight committees?

Senator GOLDWATER. The fact that sabotage efforts, espionage efforts, changing the government of Cuba were going on was certainly no secret to some of us.

It was a secret to the American people and frankly, I think it should have been. These are things that the American people do not need to know.

Senator WEICKER. First off, let me state my position on this matter, we do need an effective intelligence agency, there is no denying that. The same holds true on law enforcement. We are not on the side that you should eliminate the CIA or FBI. The idea is to create an oversight mechanism that can do a first-rate job.

I wonder if you just might respond to me the same way that I respond when the question is asked of me. What is the proper function of the Congress? Where do the American people come in on the act?

My response has been, well, when it comes to sources, I do not want to know sources, that should be kept secret. I do not want to know the names and locations of agents. That should be kept secret.

Yes, I do think the Congress and the American people should have a handle on the general policy direction of these various agencies.

That is my question to you. Why should not the American people have a say as to whether or not assassination of foreign leaders or the overthrow of a government is going to be a matter of policy for this country?

Senator GOLDWATER. Well, I will try to answer your question by examples. I do not think any American will condone assassination or murder. On the other hand, I think the average American would rather see some steps taken to avert war, even though it means the life of one man, than risk the lives of hundreds of thousands of American men. This is something we may not want to admit, because we have a very highly moralistic attitude about life, where our enemies do not.

For example, life in the Asian countries is nothing. I saw 72 people killed in one accident of an airplane, and the bodies were not even removed for days. They have an entirely different moral approach to

life and to honor than we have. So we are dealing with a world, outside of a few other countries, which thinks differently than we do.

It is very hard to answer your question, to give sort of guidelines as to what the American people should be made privy to. I found, for example, that the biggest interest indicated by any poll on the work of the Intelligence Committee was 7 percent. I do not believe that I was asked a question on it in the innumerable meetings that I have attended in the last year.

Let me give you an example as to why we need secrecy.

The CIA was very actively concerned with the war in Thailand, as we all now know. Some of this we knew; a lot of it, we did not.

I found out on one trip to Southeast Asia in a flight over Thailand that we were covertly doing a lot of work on the construction of a highway from the general vicinity of Dien Bien Phu clear into Burma. What was the reason? So the Chinese would have access to Burma with the fall of Thailand, which they expected at that time.

We were supporting the effort, not overtly to hinder that, but covertly, because it would work to our detriment to have the Government of Burma fall at that time. I think that is true now.

Those are things that should not be revealed to Americans, because it would soon become known to unfriendly governments.

I do not even know if we can make known the total amount of money that the CIA spends. I do not know if we can talk about money that is appropriated through other means, and sometimes devious means, to finance the intelligence work. I frankly do not think that there is an answer.

I may be prejudiced on this whole field, because I have served where intelligence meant whether you were going to live the next day or not, and maybe I have too tough-tailed an attitude on it, but you served too, and you know what I am talking about.

Senator WEICKER. One of the guidelines we might use is considering the ultimate exposure to the American people. If the ultimate exposure clearly involves the American people, then I think we had better bring them in on the act. If they are the ones who are going to have to pay the coinage eventually, then it seems to me that they better be brought in at the beginning, at the takeoff, rather than the landing.

Senator GOLDWATER. I would tend to agree with you. Let me take an example, Angola.

I do not find public opposition to Angola based on the reason that the State Department or Dr. Kissinger uses. I find it wholly based on the fear of another Vietnam, which is as far from the truth as it can be. I do not think there is a man serving in the Congress who would ever stand still for an American soldier or airman appearing in Angola, but there is very sound reasons for our trying to help our friends in Angola.

Now, that kind of thing, I think, could be made public. In fact, I have urged Dr. Kissinger to do this, and to get up and explain what he means by détente.

Senator WEICKER. If I can interrupt, because I agree with the point you are making here. I think you and I would disagree on whether or not we should be in Angola, but the point you make is that this is a subject matter that could be brought out on the table

for you to express your point of view, I could express my point of view, and let people decide what they want to do.

I think that the objection of most of the American people, or at least it was my objection, to have Dr. Kissinger running around the United States pointing to the Soviet Union and the Chinese without telling the American people that we were in there also. That is what bothered me. It was the hypocrisy of what was being said there.

I think—I could not agree with you more. I think Angola should be debated. I think that it can be debated.

Senator GOLDWATER. It should be explained, not necessarily debated. There is no argument about our being in Angola with troops. I would oppose that probably as strongly as you would.

I do think that we should be in there in a covert way, as we have been in many countries in a covert way, and sometimes not too successfully.

I do not think it should necessarily be in the form of a debate, although it could be. I would just like to see Dr. Kissinger or the President in front of a map, as I begged Lyndon Johnson to do. I do not know how many times, take the map of Southeast Asia and say, this is why we are here. But he never did do it, and neither have I been able to argue Dr. Kissinger into doing it. I think that he should.

Senator WICKER. As I said, there is no point in us getting bogged down in an Angolan debate. The point I am trying to make here is, in this day and age, I think it is important that Americans have as much in the way of facts before them, if, in effect, we are going to expect the people, the country, the Nation, to move.

It used to be—and you know this better than I do, Senator—they were willing to follow the opinion-leaders. They were willing to just take the word from on high and leave it at that.

Fortunately for the strength of the country, that is no longer the case. Our public education system has given us a much more aware constituency out there, and I think that is to the advantage and strength of this Nation, not its deterioration.

I think it is awfully important that those facts do come before them, because you are going to ask them from time to time to move, and if we want them to move when it counts, and those times will come as they inevitably will, then they have to have faith in their leadership.

You mentioned the moralistic attitude that we have. I agree with you. I think it is enormously important that we maintain that attitude. Maybe we are not the most honest people, maybe not the most courageous, but we think we are basically a moral nation, so a portion of that does come true. The alternative to that is the type of thought that runs through the minds of the KGB and other agencies, albeit more efficient.

I would hate to have the country thinking that way. That is all I am saying. I think that moralistic approach and the belief in ourselves that we are basically good is awfully important to how we manifest ourselves in our actions.

Senator GOLDWATER. I do not find myself in great disagreement with you. I think that we have an excellent, perhaps not the greatest, but as good an intelligence-gathering capability as you will find in the world.

I think that the American people should be kept aware in a general way of what our foreign policy really is. For example, there is a great clamor against détente. We know that détente has been practiced in Europe for thousands of years and it works, but we do not know exactly what we have in our minds.

I believe that something can be worked out that will satisfy you and satisfy all of us that would keep the American people informed as to what is the broad, general thrust of our foreign policy. In my mind, it is simple; it is the protection of freedom.

Maybe that is too simple for people today. Whatever we can do to insure that protection is something the American people should know. They should have an understanding of where we are going. They should know why Angola is important to the United States. Nobody has explained it yet to the American public.

As I said before you came in, before you reach any decision on this massive organization shown over here, and any reorganization of it, I think your first question has to be: How much do the American people have to know?

Now, the protection of intelligence sources and methods are the things that bother me, because they are the things that give the enemy an advantage over us, because we do not get the same information from them. My whole concern is that we protect the highly classified parts of intelligence that only the President should know about, the National Security Council, or some level like that, and at some later date we know about them, just as we are now beginning to learn the intelligence efforts of World War II.

Senator WEICKER. Just two more points, Mr. Chairman, that I would like to make.

No. 1, I have to disagree as to the delay of any legislation and I say that, Senator, because really it was back in 1973 in the matter of the Watergate hearings that we learned that both the CIA and FBI had overstepped their bounds.

Senator GOLDWATER. May I interrupt? Who ordered them to?

Senator WEICKER. The President.

Senator GOLDWATER. A President. Do not blame the CIA.

Senator WEICKER. I am not saying that.

That knowledge, in other words, of overstepping the bounds, came to us in 1973.

Senator GOLDWATER. That is right.

Senator WEICKER. Very frankly, all that has happened here in the last 3 years is we have received more facts. They all add up to the fact that they overstepped their bounds.

What I am basically saying to you—and the chairman knows this; everybody in this room knows this—not that I ever want any truth withheld from the American people—but the time has come to act on the truth rather than keep on sitting there in a bunch of investigations and hashing over the past, and this Congress is not taking the bit in its teeth and acting on oversight and reform of the abuses and we have known it for 3 years—not 1 year, not several months, we have known it for 3 years.

My theory is, unless we act now, like everything else in this town, everyone sits there and if you wait long enough, it will blow over and it will go away. Because I do believe in a CIA and an FBI and we

have got to have that type of activity is the very reason why I insist on oversight. Otherwise, the American people will never have the confidence in those agencies that they have to have, if those agencies themselves are to survive.

So, I do not expect that we are going to get into the business of revamping the various agencies in the executive branch. Clearly, on the basis of the job that Congress did not do, I think we can overhaul our system, which is to take it from a secondary function of various and sundry committees and put it in the hands of one oversight committee. We are not charged with revamping the whole intelligence community now. I think this should be done, and that opinion is based on No. 1, the facts that we already have in hand and No. 2, the general observation that if we do not act in a relatively brief period, then we never will act. And last, the type of thing that bothers me, and you mentioned it here in your testimony, the CIA giving \$6 million to Italian Centralists.

Senator Goldwater, I spent a fair amount of time in Italy. I cannot think of a more inane way to combat communism in Italy than to give money to Centralist politicians in Italy. Do you know why most of the Italian Communists get elected in the regimes over there? Because the people are fed up with corruption, they are fed up with politicians getting it under the table.

For the most basic needs a man has to pay politicians under the table and they vote for the Communists because they stand for integrity. Maybe that will disappear with them eventually, but right now, they have got it.

The whole problem in Italy is that you have 2 percent living high off the hog and off the top, running the government, getting all of the benefits of life; 98 percent of those people do not share in any manner, shape, or form in the quality of life that we aspire to for our own citizens.

This is a free country. If we are going to do anything in Italy, for God's sake, what we ought to be doing is give our money to the 98 percent, if we are going to give them any money at all, or insist on the type of policies that will give them the quality of life that will help them support both their own religion and democracy, neither of which they are doing right now.

That is why I think that matter should definitely have been brought out on the table for discussion, because I think as a matter of tactic, it is totally wrong.

Senator Goldwater. I think that 4 percent of the money we give goes to help the people and the rest goes to help the politicians. That has been documented, and documented, and documented. That does not come completely under the purview of what we are talking about here.

Frankly, as I told the chairman before you came in, I do not think the committee has done enough work on this. I do not advocate extending the life of the select committee. I think we wasted 4 months of our time on assassinations, and I begged the chairman not to do that, because it would wind up in one place, and it wound up there.

I think without the further study of the select committee, your committees and other committees are going to have to decide what the

eventual mechanism is going to be of gathering and handling intelligence. We know the Congress has been wrong, because we have known these things from the period of Watergate, and probably before that.

Make the changes you want to make, but let us not do anything to hamper our collection ability. Let us increase the analytical ability and protect the secrets that are essential to the Government.

That is my whole concern.

Senator WEICKER. Thank you, sir.

Chairman RIBICOFF. Thank you very much.

Only one comment before you leave.

I noted in your testimony you asked more questions that you have answers for.

Senator GOLDWATER. That is right.

Chairman RIBICOFF. I know you will be very active on the floor when we finally report something out, but remember, during the course of discussion on the floor, Senator Goldwater, that you would ask more questions than you have answers. Our job is to try to find some of the answers.

I do not know whether you will agree with them or not.

Senator GOLDWATER. I do not know whether it is a good or bad indication when a man has served on the select committee for a year and he has questions.

Chairman RIBICOFF. It is not at all.

Senator GOLDWATER. It is the nature of the beast.

Chairman RIBICOFF. That is how it should be, because with each passing day, each passing witness, I have more questions in my mind than when we started these hearings.

I do appreciate your coming.

Senator GOLDWATER. Thank you very much.

[The prepared statement of Senator Goldwater follows:]

PREPARED STATEMENT OF HON. BARRY GOLDWATER, A U.S. SENATOR FROM THE
STATE OF ARIZONA

Mr. Chairman, thank you for granting me the opportunity to testify before your Committee.

Before going into the details of the legislation you are considering, I would like to make some brief general comments.

In the last few years, the Congress has attempted to exert greater influence on the nature and conduct of our foreign policy.

What are the results?

Two good allies, Greece and Turkey, have been alienated.

Jewish immigration from Russia has been reduced.

The hands of our President have been tied in the day-to-day conduct of foreign policy.

U.S. intelligence is demoralized and its effectiveness greatly diminished.

Our allies seriously question America's reliability, if not our collective sanity.

Our adversaries take comfort in watching us tear ourselves apart.

Mr. Chairman, I have here page one of the Washington Post of January 7, 1976. Three headlines paint a picture of American foreign policy today.

The left-hand column is entitled, "CIA Giving \$6 Million to Italian Centrists." In the middle, below the picture, "CIA Agent Welch Buried" with the subtitle, "Ford, Kissinger Among Mourners at Arlington."

On the right, the headline reads, "Two Soviet Ships Head for Angola".

Taken together the headlines describe an impotent giant—our Nation.

Disclosure of covert aid to Italy is the direct result of the Hughes Amendment to the Foreign Aid Bill adopted by the Senate on October 2, 1974.

This means approximately fifty Senators and over 120 Congressmen may receive highly sensitive information on a covert action. It also means public disclosure is almost inevitable.

Worst of all, it gives a personal veto to any Member who disagrees with a covert action—with the veto coming in the form of subrosa release to the Washington Post or the New York Times.

Mr. Chairman, I shall oppose any general legislation dealing with the intelligence community which fails to provide for:

One, a repeal or severe modification of the Hughes Amendment.

Two, criminal sanctions against any member of the intelligence community who releases classified information having voluntarily entered into a secrecy agreement.

And three, a flat prohibition against any intelligence agency revealing the name or identity of any foreign agent employed by the U.S. to the Congress or any of its committees or members.

S. 2893 fails to deal with these vital matters.

Specifically, I am opposed to S. 2893 known as the "Intelligence Oversight Act of 1976" for the following reasons:

1. The Senate needs one more standing committee about as much as the Nation needs more inflation. We are merely adding another layer on the cake.

2. Members of this proposed "B" Committee would be appointed by the Majority Leader and the Minority Leader. This is contrary to Senate practice where appointments to standing committees are the prerogatives of the Senate Steering Committee on the Democratic side and the Committee on Committees of the Senate Republican Conference.

3. Limiting the tenure of Senators to six years on the proposed committee is an assault on the seniority system and inhibits the development of expertise.

4. At variance with the practice of other standing committees, the proposed committee would have a Chairman and a Vice Chairman. Also, unlike other standing committees, the Chairman would be appointed by the proposed committee instead of the entire Senate. The Vice Chairman, a member of the minority party, would have the authority to act for the Chairman in his absence. This is contrary to Senate precedent where the Ranking Majority Member acts for the Chairman in his absence, or whoever is senior on the majority side. I believe the majority party should control the standing committee.

5. No single committee of the Senate should be given legislative jurisdiction over all the intelligence activities of the U.S. Government. Because the Senators are already spread very thin in their committee assignments, the provision allowing Senators to serve on the proposed committee in addition to all others is merely going to compound the problem.

Moreover, the best Senate staffs have at least a few persons of long service thereby providing continuity and reducing the possibility of legislative error.

The proposed new committee would have ultimate authority to disclose any intelligence secrets by majority vote. No matter how strongly a Senator may feel about a foreign policy issue to overturn a policy through the disclosure of secrets can only lead to peril for the Nation. Such a provision may raise Constitutional questions—questions I shall leave to those versed in Constitutional law.

S. 2893 requires the intelligence agencies of the Government to give prior notice of the intention to carry out "certain kinds of intelligence activities" before they are initiated. While prior notice is required in some non-sensitive departments and agencies, I believe that intelligence by its very nature must be given special treatment. Prior notice could place the lives of agents in grave peril. And, even if their lives were not in peril, prior disclosure to committees of the Congress would tend to dampen their ardor.

Should the Director of Central Intelligence be separated from the Central Intelligence Agency?

If the United States Intelligence Board is to have a presiding officer independent of the CIA, what authority should he possess to coordinate the intelligence community?

Should the responsibility for covert action remain with the CIA? If not, where is the logical organization to house this activity?

Authorization and the direction of covert actions have varied under Presidents Eisenhower, Kennedy, Johnson, Nixon and Ford. Should there be statutory requirements as to Presidential accountability for covert action?

Apparently, the analytical capability of the Defense Intelligence Agency is substandard. Should the DIA be made an essentially civilian agency presided over by a General Officer in order to encourage the recruitment of analysts? In such an event, should the DIA be given greater flexibility in the promotion of civilians as is the case with the CIA?

The NSA was created by Presidential directive in the early 1950's. Should the NSA have a charter in the form of legislation?

The counter-intelligence programs of the FBI are based on a letter written by President Roosevelt in 1939. Should the counter-intelligence activities of the FBI be sanctioned by statute?

J. Edgar Hoover did an outstanding job of reorganizing the FBI in the 1920's. He transformed the Bureau from an inefficient, politically ridden organization into a first-rate investigative force. Nevertheless, improprieties and abuse crept into the FBI during the later years of his career, raising these questions: Should the tenure of the Director of the FBI be limited to a fixed number of years? Should there be greater supervision of the Bureau by the Attorney General?

Should there be a statute requiring a President to request in writing, and stating his reasons for wanting, any information from FBI files on U.S. citizens?

Mr. Chairman, there is one issue about which there is no question: abuse by the Internal Revenue Service. In the past, the IRS has provided tax information that, in one way or another, has been used for improper and illegal purposes. The so-called treaties between the IRS and the state revenue services have been part of the problem especially where tax information has been revealed during political campaigns.

Administrative practices of the IRS have severely harassed a number of American citizens. The safeguarding of tax information and the protection of the rights of our fellow citizens from administrative abuse deserves the most immediate scrutiny by the Executive and the Congress.

The Senate Select Committee on Intelligence Operations has devoted most of its time to abuses, which may be understandable considering the time limits imposed by S. Res. 21.

Any reorganization of the intelligence community, or any amendment of the National Security Acts of 1947 and 1949, should come after the most careful and deliberate consideration by the Congress.

Testimony should be taken from experts past and present in the field of intelligence. If we are to perform surgery, let it be with a very sharp scalpel and not a meat axe.

We all know the climate is different from what prevailed in 1950.

We all know the days are gone when the DCI could whisper into the Chairman's ear.

In the past, there was little oversight of the intelligence community, because that was the perception of the Presidents and of the leadership in Congress. Times have changed.

If the Congress wants more oversight, the existing committees can and should be required to perform. I believe they will be responsive.

Chairman RIBICOFF. Senator Hollings, would you proceed?

TESTIMONY OF HON. ERNEST F. HOLLINGS, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator HOLLINGS. Mr. Chairman, I appreciate your invitation.

Mr. Chairman, Senator Weicker. I apologize for not having a formal prepared statement, but I thought I ought to express these views, having had a long ago experience that has gotten somewhat dulled in a sense, 20 years ago. We had then the same hiatus on Capitol Hill and it has been interesting for me to observe it. At that particular time we had all the hearings when McCarthy was making all the charges, we had the leaks and security risks and everything else.

President Eisenhower tried to cover it with Gen. Jimmy Doolittle's study of the Central Intelligence Agency.

As they say today in Washington, it did not play in Peoria. It did not allay the fears and concerns. In itself, it was a coverup.

As a result then, the Hoover Commission went into all of the intelligence activities of the U.S. Government. I served on that task force at the time in 1954 and 1955, and we received the McCarthy papers, incidentally, and we disposed of those.

We filed our report, and as Senator Weicker said, everything simmered down and we reestablished confidence in our systems—and incidentally, we looked at that British intelligence system too; and I can tell you ours is better. We looked at all of the systems. It is a complex matter.

We saw waste and duplications of the different agencies overseeing each other. We found one big gap and we moved to fill it. At your invitation I found over the weekend the only copy of the task force report that I can get my hands on right now. In the public report, you will find recommendation number one by that task force, that "the Central Intelligence Agency be reorganized internally to produce greater emphasis on certain of its basic statutory functions and that the Director of the CIA employ an Executive Officer or Chief of Staff."

The final classified report of "Top Secret"—it is about this high [indicating]—we filed with President Eisenhower. We all reviewed and signed it, and it went into depth into the CIA being overwhelmed with covert activities and not really getting into the basic intelligence gathering.

We had found that the Director, Allen Dulles, was doing an outstanding job, but trying to do too much of an outstanding job. That is why we said he ought to get a Chief of Staff to help him. But the interest, attention and efforts of the CIA were preempted by covert operations, and we wanted to get into actually finding intelligence data and simmer down many of the covert activities.

Then we recommended—and I will read what the task force recommended very briefly: "That a small permanent bipartisan commission"—not committee—"that a small, permanent bipartisan commission composed of members of both houses of Congress and other public-spirited citizens commanding the utmost national respect and confidence be established by act of Congress to make periodic surveys of the organizations, functions, policies and results of the Government agencies handling foreign intelligence operations and to report on the adequate security safeguards with findings and recommendations to the Congress and to the President annually and at such other times as we deemed necessary and desirable; that proposed watchdog commission to be empowered by law to demand and receive any information it needed for its own use.

It would be patterned after the Commission on the Reorganization of the Executive Branch of Government, namely the Hoover Commission. Appointments by the President of persons from private life to the proposed commission should be made from a select list of distinguished individuals of unquestioned loyalty, integrity and ability with records of unselfish service to the Nation.

That would be my recommendation today, here, 20 years later, and for good reason.

I might add, as an aside, that the full Hoover Commission modified the task force recommendation by saying that there be two committees, one from the Congress, one from the President. Really, the executive still did not want to trust the Congress. They still had in mind at that particular time of not giving a Senate and House Member—or to the

people, Senator Weicker—the information, and they argued about that, and they changed our task force recommendation. We stuck by it, and I think if we had kept it going and in being, we would not have had this hiatus today.

That really has been the breakdown, that the Congress did go with the recommendation of the Hoover Commission with special members of the Appropriations Committee, special members of the Armed Services Committee, and others receiving so-called periodic briefings, but they did not do their job. They did not do their job.

I moved from the chair over here to over there when I came into the room to find out where, on that detailed chart of that national intelligence community, where the Congress was. They did not have it listed. Everyone wants to disregard it.

As the one Church committee member, Senator Goldwater, who just left the stand said, they spent 10 months running around like a dog chasing his tail over assassinations.

Chairman RIBICOFF. Is there any question in your mind that the Congress and the American people need a new Oversight Committee?

Senator HOLLINGS. Right. They need this kind of commission, and I will emphasize why. To get right to that point, to fill out that thought I had about the assassinations versus the breakdown, I think there has been a whole new day developed. We had all of these covert activities, like in 1966 when I went to Indochina, we had a secret war in Laos, and when the GI was killed there, I had to write his parents, as you Senators did too, about the supreme sacrifice he gave his country in a secret war in a secret land. I could not tell those parents where, how, or why.

Chairman RIBICOFF. The whole world knew about it, except the American people.

Senator HOLLINGS. That is exactly right. We have come down to the point, we have a whole new view of this thing and of our own responsibilities. Formerly we had Senator Ellender who said, do not tell me anything, because if you do, I might talk in my sleep, so I don't want to know anything. We had the other distinguished chairman of the Appropriations Committee say, under the law I cannot tell a fellow member if they had reported to him they had a covert activity to assassinate someone.

I would take it, under his view of the law, that he was supposed to listen but not communicate it whatever, just squat on the information.

That was not the intent at all.

Now you are going to have to put a few safeguards that they do their jobs and there be some continuity. In essence, what really broke down and brought it to our minds was the Chile episode whereby we took a freely elected government and by covert action tried to disrupt it and overthrow it.

If I had been with the CIA in Chile at that time, I would have felt that I not only had these kinds of safeguards in my President and my National Security Council, but that I had Congressmen who also knew, and that I had the support of my Government in what I was doing.

That is where the breakdown has been, and the committee's report has all to do about assassinations and has not, like Pogo, met the enemy, which is really us.

Now, we must do our job. Now, which ones have to do it? The ones that do not want to do it; namely, the leadership.

I start with the leadership for the main and simple reason that they are the ones who have to know. There is no reason to appoint a nine-man committee without the leadership. You can't tell me that the majority leader is not going to find out what is going on, or that the chairman of Foreign Relations or the Appropriations Committee do not know what is going on. They call up the leader of the Central Intelligence Agency. George Bush is going to run down and tell Mike Mansfield, or John Sparkman, or John McClellan in a flash.

So realistically, we approach the problem from the standpoint of those who must know and should know, and should not turn that responsibility over to a revolving committee with no seniority, and therefore no interest, in getting on it. No one wants that.

This is an unglamorous field. I learned that from having been in it for 2 years. You did not see me volunteering to get on the Church committee, because I knew in a short period of time, they could not get into it thoroughly.

The only way to thoroughly learn about intelligence—since we are talking about that, Senator Weicker—is to really be an agent in the operation there for 5 years yourself and then surface and know what questions to ask.

There is no congressional committee that can, in a 9- or 10-month period, really learn what they need to know completely.

But, going back to the way of attacking this problem and re-instilling the confidence of the American public in our intelligence effort, I lean very strongly toward the commission. I know about these committees and commissions, and Mr. Chairman, you and I have been in government long enough to hear the argument about school board members, whether they should be appointed or elected. I have seen good school boards elected and good school boards appointed, and it can go either way.

At this point in time, we have had the experience of the Hoover Commission, and we ought to have the House and the Senate and the executive branch working in unison on this one. It is absolutely fundamental at this particular time. For one thing, if you take, as I would recommend, on it the congressional side, that it consist of the majority and minority leader in the Senate, the chairmen of the Appropriations and Armed Services and Foreign Relations Committees, that you would have five there. If, on the House side, you had the Speaker and minority leader and the chairmen of the International Relations, Appropriations, and Armed Services you would have five from the House. And then, with those 10, they could serve with 5 appointees by the executive branch of persons with credibility, national credibility, the likes of David Rockefeller and Roy Wilkins, I. W. Abel, George Kennan—we could think of many who could serve and who immediately would instill confidence in what they saw and knew.

I think those Executive appointees will help to get the leadership to attend the meetings. All chairmen of committees are overburdened, overworked, and certainly the Speaker and the majority leader, are too. They will not attend. But if, after a year—they have quarterly meetings four times a year, or three times a year—and you will find, if you put Henry Ford on or Rockefeller, the others will come, just

like you and I on the Intergovernmental Relations Advisory Commission. As Governors we had a plane, we had a parking place, and a limousine and we would come to the Intergovernmental Relations Advisory Commission as an outside member. As a Senator, I find it near impossible to get downtown and worry about votes here and other committee assignments and everything else.

But if you have that Commission, and it meets on Capitol Hill, and those distinguished Presidential appointees do attend, they will wonder why they have been there for four or five meetings and have not seen the Speaker or the majority leader. So the leaders will attend.

Chairman RIBICOFF. The only trouble, Senator Hollings, is that from my experience, the more distinguished the so-called members of the Commission are, the more they are amenable to the President of the United States.

Frankly, based on close, personal observation, I would never serve on a Presidential Commission unless the President publicly stated that he would make public and fight for any recommendation that the Commission came up with. There are more Commission reports that are gathering dust in the Archives of this country than will ever see the light of day.

Take what you did 20 years ago. You had one heck of a job finding one single copy somewhere, and that was buried, like everything else is buried.

I sort of disagree with you. I think the way the makeup of the Senate is today, the younger men really reflect better than many of the older men the thinking of the American people. They are more sensitive. I think there is room on the oversight committee for the younger men and some people with experience, some of the older men. I think sometimes the longer you are here, the more you become a part of the establishment, so I personally would not substitute a Commission for a real good group of Senators who represent the different sections of the Nation, different philosophies, and different age groups. That is my own thinking.

Senator HOLLINGS. Let us go back to those observations. First, with respect to your appointment and mine on the Intergovernmental Advisory Commission by President Eisenhower.

I am sure the distinguished chairman did not ask President Eisenhower to agree to everything the Intergovernmental Relations Advisory Commission recommended or you would not serve. You served with distinction; I served along with you; and we did not exact that from President Eisenhower when we took that appointment.

Chairman RIBICOFF. There is a lot of water over the dam. I remember when I was Governor of the State of Connecticut, there was not a man or a woman that I asked to serve on a special commission or a special study group, Republican or Democrat, irrespective of philosophy, who refused me. Publicly I stated, when I appointed these people, that I would take their recommendations because I trusted them. I would make them public, and I would go to the legislature and the people to fight for them.

And consequently, there was much of a constructive nature achieved. The best brains and most prestigious men and women in the State of Connecticut made themselves available because they knew that the

Governor who appointed them would go down the line and fight for them, and it would not be buried.

I have seen, since that time in the Federal establishment, Commission after Commission that worked like dogs, gave their time, gave their energy, gave their brains. Then their work was tossed aside and put in a drawer. It was buried by a President.

I know of very few recommendations that ever saw the light of day, that ever got into the public domain, that ever became part of the legislative process. I personally am very skeptical about Presidential commissions. If you study the history of Presidential commissions, you will find generally that it is a rare one that ever achieves anything.

Senator HOLLINGS. That is the one I am recommending, the rare one, the Hoover Commission. That was the exception.

It has been the exception and it served with distinction and a lot of its recommendations were followed through. This recommendation was followed through. It was not lost for 20 years or buried.

It was for the main and simple reason that you had the leadership of the U.S. Senate and the leadership of the House of Representatives serving with them, so after the private members' and the Presidential recommendations were made, these activist members of the Congress themselves could pick up the ball and run with it.

So I am recommending, not the general rule of Commissions, task forces, and all of those other things that I generally agree with the chairman on. I am recommending the exception, namely, the Hoover Commission report.

Some of the words there—and I will just read a couple of sentences here to show you how prophetic they were—

The task force recognizes that secrecy is necessary for the proper operation of our intelligence activities, but is concerned over the possibility of the growth of license and abuses of power where disclosures of cost, organization and personnel and functions are precluded by law. On the other hand, sporadic investigations in this field might inadvertently result in unauthorized disclosure of classified information to the detriment of the intelligence effort.

Exactly what is going on.

Periodic orders of studies by some qualified and impartial agency would remove both of these dangers. It would also allay any suspicions or distrust that have been developed in the public mind by the complete secrecy of these operations. Such a procedure might also serve to shield our intelligence programs from unjustifiable attacks on the agencies' concerns and hence public confidence in support of this vital work.

Comprehensive periodic studies of the foreign intelligence activities of the United States will be made by the Commission with special attention to the question of whether the assigned work of these intelligence agencies is being carried on efficiently and effectively, whether there is any unnecessary overlapping or duplication of effort between military and civilian intelligence agencies. Whether the staffs are of the size justified by their assigned functions and producing the intelligence required for the security of the nation, whether the expenditures are within budget authorizations and in keeping with the expressed intent of the Congress while the fiscal policies and procedures are in conformity with sound accounting principles and practices to the maximum extent possible. Whether any of their activities or policies are in conflict with the foreign policy aims and programs of the United States, and whether the effort of any of these intelligence agencies is being dissipated or adversely affected by the assignment of added functions alien to intelligence.

I will not belabor the committee any further, but simply put, when you talk to the junior members, that is another problem. The senior members do not want this, because this is a thankless task. And even

the junior members know, rather than waste 6 years of their time on it, they could have been building 6 years of position and knowledge and capability and seniority within the Joint Economic Committee or with one of these other disciplines and problems. If they give 6 years to intelligence, they cannot tell their folks back home about it if it was anything good, and if it was anything bad, they are going to get blamed for it.

You are not being realistic if you are talking about this oversight and junior members. That is not the problem here. The problem here is the effectiveness and necessary secrecy of an intelligence agency being maintained, in the knowledge while providing the facts and knowledge to those responsible. The leadership—elected by the members, including the junior members—and the minority side and these particular chairmen, must have the facts if they are going to rule on the appropriations and the foreign policy and the armed services.

If you limit it there and let the junior members—of which I consider myself one—jump on the senior members for not doing their job, there is where we can come to play. We can still be briefed on intelligence matters, whether it be Angola, Diego Garcia, Israel or anything of that kind. We are not ruled out.

There is a new day now about CIA briefings for any and every member. A Hoover-type commission, a small, 15-man watchdog commission, would go a long way toward the reestablishment of public trust in our intelligence system. It would involve the Executive, the legislative, and the public. If you establish the habit of this kind of oversight, then you do not go off in what has been engaged in now on the House side, with misunderstandings between the Executive and the legislative branches as to whether we are breaking our word, or whether we can be bound not to reveal or to reveal, and all of these other peripheral or side issues that really should not be the concern of this committee.

Chairman RIBICOFF. Senator Weicker?

Senator WEICKER. I have no questions.

Chairman RIBICOFF. Thank you very much.

Just one parting comment. I notice that we do now have a Foreign Intelligence Advisory Board, I asked the staff to get me a list of the names on it. [See p. 355.] My guess is you will find very prestigious members of the American community, and I do not ever recall that the Foreign Intelligence Advisory Board ever blew the whistle on any of the problems that we are faced with.

Senator HOLLINGS. That is true. The President did not do his job and he left, but no one has recommended to do away with the executive branch of Government.

Chairman RIBICOFF. We are not doing that.

Senator HOLLINGS. I am talking about President Nixon. All of us have been rather lax on this and relied on the others. This is not to say that the system itself did not work. It is the members within the system who failed, and under the new day I am confident the system can work, generally speaking. It is not a bad setup.

You can move the players all around and you can talk about putting junior members on and all kinds of other proposals. But the need is to go to the crux of the problem—to address what really has been wrong. I think my proposal does just that.

Chairman RIBICOFF. Thank you very much, Senator Hollings.
[The information referred to and subsequently supplied follows:]

THE WHITE HOUSE,
Washington, D.C., May 1975.

PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD

- Anderson, George W., Jr.—Appointed by President Nixon on May 1, 1979 to replace General Maxwell Taylor as PFIAB Chairman; former Chief of Naval Operations; former U.S. Ambassador to Portugal; presently director of several large corporations.
- Baker, William O.—Originally appointed to the Board by President Eisenhower and reappointed by each succeeding President; currently President, Bell Telephone Laboratories, Incorporated; member of the National Academy of Sciences and numerous other governmental and quasi-governmental boards and commissions.
- Cherne, Leo—Noted Economist; presently Executive Director of the Research Institute of America, Incorporated; member of the United States Advisory Commission on International Educational and Cultural Affairs; member of the Board of Advisors of the Industrial College of the Armed Forces, and numerous other boards and commissions.
- Foster, John S., Jr.—Physicist; presently Vice President for Energy Research and Development, TRW, Incorporated; former Director of Defense Research and Engineering, Department of Defense; and former Director of Lawrence Livermore Laboratory and Associate Director of Berkeley Laboratory.
- Galvin, Robert W.—Chairman and Chief Executive Officer of Motorola, Incorporated; Director of Harris Trust and Savings Bank; Director and past President of the Electronic Industries Association; and former member of the President's Commission on International Trade and Investment.
- Gray, Gordon—Publisher; Director of R. J. Reynolds Tobacco Company and several other large corporations; former Secretary of the Army, Special Assistant to the President (Eisenhower) for National Security Affairs, Assistant Secretary of Defense (International Security Affairs), Director of the Office of Defense Mobilization; former Chancellor and President of the University of North Carolina.
- Land, Edwin H.—Inventor of the Land Polaroid camera; presently Board Chairman of Polaroid Corporation; member of the National Academy of Sciences, and numerous other similar groups.
- Luce, Clare Boothe—Novelist and Playwright; former U.S. Ambassador to Italy, and Congresswoman from Connecticut; presently member of the White House Preservation Committee, the Academy of Political Science, the American Institute for Foreign Trade, and numerous other boards and commissions.
- Shultz, George P.—Former Secretary of the Treasury and Assistant to the President (1972-74), Director of the Office of Management and Budget (1970-72), and Secretary of Labor (1969-70); economist; educator; member American Economic Association, National Academy of Arbitrators, Industrial Relations Research Association; presently President of Bechtel Corporation.
- Teller, Edward—Physicist who played a major role in the development of the first atomic bomb, and has made important contributions in the fields of chemical physics, molecular physics, nuclear physics and quantum theory. He has been associated with the University of California since 1952, where he currently holds the position of University Professor of Physics and Associate Director of Lawrence Livermore Laboratory.
- Byers, Wheaton B.—Executive Secretary of the Board.

Chairman RIBICOFF. Congressman Harrington?

Thank you, Mr. Harrington. Can we have the benefit of your thinking, sir?

Representative HARRINGTON. Thank you.

I have a prepared statement which is not overly long, Senator. I would like to insert it in the record, and then be available for your questions.

Chairman RIBICOFF. Without objection, your entire statement can go in the record as if read, and you can make any comments from it, or any general comments that you like, sir.

I would let you make your own determination on how you would like to handle your testimony.

TESTIMONY OF HON. MICHAEL J. HARRINGTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Representative HARRINGTON. Let me try to summarize it, Senator, and strike the theme that I think is most important.

I suggest very strongly that we take our cue from the experience that Senator Weicker had on the Ervin committee in the summer of 1973, which led in classic congressional fashion to the education of the American public on a series of very complex issues. That public was thus able to respond in a way to get a rather reluctant House, in the fall of that year, to take action dealing with the then-incumbent President.

We do not have, as a result of the hearings that have been running since last spring in the instance of the Senate and last summer in the instance of the House, a similar situation confronting us today as your committee attempts to review the recommendations made preliminarily by the Church committee.

I suspect that we are at a point no better than where we started, with too little public knowledge, with too little awareness in general of the scope of the educative function being carried out by the Senate or the House—many of whose hearings were in executive session—in short, a confused, ill-informed public, joined, I suspect, in a somewhat lesser degree by a confused and ill-informed Congress.

My strong recommendation would be that the life of these committees, both on the Senate side and the House side, be continued for the remaining portion of the 94th Congress.

Despite the initiative undertaken by the administration during the last 6 weeks—after the unfortunate killing of the CIA agent in Greece—to engage in a counteroffensive over the responsibility of Congress, we should address this issue as much as possible in public, and call witnesses who can contribute directly to the public debate in terms of the substance of our intelligence community's activities.

I would suggest also, before proffering a solution which involves an oversight function vested in one committee, or perhaps a joint committee, that a number of specific areas of actual legislation involving restrictions on the executive branch be undertaken. We would then have a very clear demarcation of what the role of the executive would be, and avoid the continuation of hazily defined responsibilities that characterizes our relationship with the intelligence community over its existence in the last generation.

These are the concerns that I have, but perhaps the primary one is the failed task of educating and informing the American public and broadening the debate to get to the basic core of what I think this is all about, namely, what are we as a people—do we countenance, or should we countenance activity of this kind with the rationale being they do it and we should also do it? Or should we get into a debate or dialog which I think we are capable of doing, that may lead to some

enlightened conversation and discussion about what our foreign policy is to be and what the role of the Government is to be in this area toward its own people.

All of this, in my opinion, has largely been lost by the nature of the hearings that have been conducted to date, and I would suggest that by proposing a remedy now which involves oversight—especially in light of the rather sorry history that oversight has had in this particular area—we are doing a singular disservice to the American public, because we are suggesting that we actually are getting at the problems that we have here.

I think the charters—if they are to be called such—for the agencies that are involved ought to be clearly defined, and not left to the attendant secrecy which has characterized them in the past.

I come this morning, not with an expectation that the life of our investigatory effort is to be extended, but with the hope that we might reflect on whether or not that job has been done well, and proceed at least with some appreciation of the need for greater education.

Thank you.

Chairman RIBICOFF. Thank you very much, Congressman Harrington. Your entire statement will go into the record as if read.

Senator WEICKER. Thank you, Mr. Chairman.

One point that the Congressman has raised, and it was alluded to by Senator Goldwater earlier, and indeed, other witnesses that appeared before this committee, has to be emphasized here, and I would like to have the Congressman amplify.

There is a basic question that comes up in our Bicentennial year, almost a constitutional question as to how much knowledge the American people are going to have as to the activities of their Government. This is the basic question no matter what we do. In the argument between secrecy or lack of it, what have you, there is a decision that must be made here; everyone has to participate in how we are going to operate now and in the future.

Is there going to be some narrow definition of knowledge, or is it total knowledge; a narrow definition of participation, or is it total participation?

This is really the question that confronts this committee, and it is a question, I know, that has confronted the Congressman personally and it is something that I think has to be faced up to.

I would like to have your observation.

Representative HARRINGTON. Senator, I think the tenor of my remarks made it clear what direction I would be going in, but let me address it briefly.

I think we ought to take risks to preserve what we claim to be the difference in our experience, and not allow what I think is an increasing perception on the part of the rest of the world that there is a very little degree of difference between our society and the societies that we regularly condemn as closed.

I would certainly opt for openness in almost all areas that I can conceive of when it comes to the question of what the American public's capacity is and the trust that should be placed in it. It is the price we pay for the continuation of the democratic process.

That may sound naive, but I suggest those that have taken the so-called hard line or realistic line do not have much of a track record.

Looking at the history of the last few years, and the state of disarray the public has experienced in terms of its Government and its confidence that it can solve problems, convinces me that we in Government have had a very clear warning: as long as we continue to appear to be an alienated force when it comes to a public perception of our role, we are going to have a problem.

I think you have a singular chance here not just in the narrow issues of whether we keep the agency functions as they are, whether we create oversight, but also to begin to at least stake out that line, that difference, that we theoretically claim separates us from other societies. I think we have done a profoundly poor job in the last generation doing that.

Senator WEICKER. Thank you.

Chairman RIBICOFF. Thank you very much, Congressman Harrington.

[The prepared statement of Congressman Harrington follows:]

PREPARED STATEMENT OF CONGRESSMAN MICHAEL J. HARRINGTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. Chairman: These hearings on intelligence oversight legislation mark the culmination of the past year's investigations and debate, and I welcome the opportunity to appear before you today. Unfortunately this is the culmination of a process that has largely avoided public discussion of the issues involved. How we now proceed in the Congress must reflect the fundamental issues involved in the intelligence controversy. Over the past year we have all too often lost sight of the reasons for which the process of reform was started.

In the most basic terms, the debate over the proper role of our intelligence agencies is a debate over the real purpose and meaning of this country. It is a debate about whether the United States can and should stand for a higher standard of political conduct in domestic and international affairs than other societies. If we believe that we should—as most of us do—then we are obliged to confront in public debate the conflict between that belief and much that we have accepted as necessary in the name of security over the past thirty years.

The importance of the controversy over our intelligence agencies is that it involves the most basic principle of democracy: that government rules with the consent of the governed. And no people can freely give its consent when it fears and mistrusts its government.

But the people can *only* fear and mistrust a government which lies as a matter of policy, which compiles dossiers based on surveillance of political dissenters, and which impedes the free exercise of their rights. Nor is our commitment to the notion of consent credible when the government attempts to fix foreign elections and overthrow freely elected governments. These, after all, are among the valid reasons this country has opposed the expansion of foreign totalitarianism. And yet we now know they have happened here. We must confront the basic question: Does the greater risk to the nation lie in external and internal threats to our security, or is there a greater danger in the loss of our national uniqueness and commitment?

This debate did not take place during this past year, and as a result there exists no national consensus on the proper role and function of intelligence agencies in a democracy which can be translated into legislation. To begin with oversight legislation is, to a large extent, to put the cart before the horse: Congress must first establish new standards of Executive conduct in this area and *then* set up a mechanism to enforce those standards. We must disabuse ourselves of the notion that oversight as such is a remedy for the abuses and questionable activities of the intelligence agencies of which we have learned in recent months. All too often the agencies have had either no law, or vaguely drafted law, to guide and limit their conduct. If we have learned nothing in the past year, we have learned that the legal authority under which our intelligence agencies operate needs total revision. Most of that legal authority was drafted in times very different from our own, and reflects the atmosphere of the darkest days of the Cold War. It is imperative that the National Security Agency and

the FBI be given charters in public law, just as the National Security Act of 1947 should be redrafted to define the permissible and proper functions of the CIA.

The overriding purpose here must be to institute a government of laws in an area that has for too long been a government of men. It is simply not enough to set up new oversight committees, working in secrecy, and assume that they will prevent in one way or another the mistakes of the past from being repeated. This is so because the record of Congress in the last thirty years has been so poor in this regard. The vulnerability of oversight without charter legislation has been dramatically illustrated by the successes of the present Administration counter-attack on Congressional reliability. By casting the debate in terms of the ability and willingness of Congress to keep secrets, rather than the propriety and efficacy of clandestine operations as conducted by the Executive the Administration hopes to strike a deal: oversight in return for an official secrets act.

Congress must not only be independent in its judgment and oversight, it must be seen to be independent. And that means that it must enforce a new set of standards enacted into law. Charter legislation must therefore precede oversight legislation and be the basis for it. I recommend, therefore, that no action be taken to set up oversight committees now, but that the lives of the investigating committees be extended through the rest of the 94th Congress, with instructions to hold public hearings on the central questions of secrecy, clandestine operations and official lying in a democratic society. These committees should draft legislation which addresses the interrelated and inseparable questions of classification, covert action, clandestine collection of intelligence, official dishonesty through "plausible denial," the organization of the Executive branch to collect and analyze intelligence, and the proper role of the Congress. Considering the fact that the Senate Select Committee held a single morning's public hearings on covert action, and none on collection, while the final report of the House Select Committee has been withheld from public release, it seems blatantly obvious that the work of these committees has not been completed. We must not mislead the public into believing that reform has been instituted in this important area when the basic problems remain unexplored and unreformed.

Effective charter legislation which would form a sound basis for congressional oversight would do a number of things:

(1) Make it a matter of national policy that the United States will no longer engage in covert action—that is, active clandestine intervention in the internal affairs of foreign countries. We should make it clear to the world that the strength and greatness of the United States does not depend on dirty tricks, and that those who believe that it does fundamentally misunderstand this nation. It is consistent with our traditions to help our friends and oppose our enemies openly.

(2) Intelligence personnel abroad should be openly designated as such. Suspicion of being intelligence officers should not attach to all official U.S. personnel abroad, nor should actual intelligence officers be asked to take unreasonable risks. As specialists they have legitimate functions to perform in our embassies. Their safety will not be enhanced by repressive official secrets legislation. They will be safe only if their activities are open and circumscribed by law.

(3) Military intelligence collection should be reduced in scope and the Defense Intelligence Agency should be abolished. There is a virtue in competing centers of analysis, but only waste in duplicated collection. An agency should be created in Defense to serve the Secretary of Defense, as the Secretary of State has the Bureau of Intelligence and Research, and not simply the Joint Chiefs of Staff, as is presently the case with DIA. The Director of Central Intelligence should be strengthened as a manager of the intelligence community to more effectively related requirements to collection, and to reduce duplication in collection.

(4) The classification system should be revised after extensive study, both by the select committees on intelligence, and probably by a national presidential commission. Standards of classification should be written into law, restricting the number of people authorized to classify and the time limit on declassification. The law should protect those government employees who feel their conscience requires them to make public disclosures, and should provide a mechanism by which they could do so without penalty.

(5) A set of safeguards should be instituted, aside from congressional oversight, to insure the legality of intelligence operations. This should include a special prosecutor outside the Justice Department with jurisdiction over the intelligence activities of federal agencies, and an Inspector General for the

entire intelligence community. Both of these officers should be confirmed by the Senate and have fixed terms different from that of the President.

(6) The intelligence gathering functions of the FBI should be abolished, and that agency should be restricted to investigating and solving crimes.

(7) A separate agency should be established to function abroad and at home for the purpose of counter-intelligence, and this function should be removed from the CIA and the FBI. Tight guidelines should be written to govern the activities of this agency with respect to United States citizens.

(8) The National Intelligence Estimates and other national intelligence products of the intelligence community should routinely be made available to the foreign affairs, armed services, and intelligence committees of the Congress. This would prevent the Executive from arguing that only they possess accurate information.

Only when these legislative objectives have been met, can we be sure that congressional oversight will be meaningful, and that members of Congress will not in the future retreat into their passive acceptance of Executive wisdom and initiative. It must be made plain that if risks are to be taken, it should be to preserve those traditions and values we would have others emulate. If we are unwilling to take those risks, and choose instead to seek security above all, then we run the very real risk of becoming more and more like our enemies.

Chairman RIBICOFF. Congressman Beard, please.

May I say Congressman Aspin was to testify but has another House responsibility, so without objection, Congressman Aspin's prepared testimony will go into the record as if read.

[The prepared statement of Congressman Aspin follows:]

PREPARED STATEMENT OF HON. LES ASPIN, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF WISCONSIN

Mr. Chairman, I would like to endorse proposals before this committee to establish a standing committee to watch over the intelligence community. I make that endorsement with a major caveat, however.

A committee is no cure-all for control of the community. Many reforms are required. We in Congress will be deluding ourselves if we think we can vote for a committee and then walk away, satisfied that all's now well with the world. A committee is *part* of the solution; a committee is not *the* solution.

This is not the forum for discussing the range of changes needed in the executive. The House Select Committee is framing its recommendations and they will be published in a matter of days. The Senate Select Committee will be reporting in a few weeks.

I will focus today on three key issues: what are the limitations on a congressional committee, how should a committee be organized, and what role should a standing committee play in covert operations.

LIMITS ON A CONGRESSIONAL COMMITTEE

The public should be aware that any standing intelligence committee will begin life with three heavy weights tied around its neck.

First, many congressional committees have a way of becoming advocates of the programs they are supposed to oversee. We all know of committees famed for taking care of their constituency. The overseer becomes, instead, the ally.

The Senate and House have each had small subcommittees which for years were supposed to keep an eye on the intelligence community. But in two decades the watchdogs never barked. It has been suggested that rotating members on and off a standing committee might lessen the likelihood of capture. But then the members would lack expertise.

Second, the members of an intelligence committee will be suffering from limited knowledge. Their knowledge, in fact, will be limited largely to what the intelligence agencies tell them.

An intelligence committee will be quite different from other committees. The Education Committee, for example, hears from teachers, parents and superintendents and doesn't have to rely solely on the Office of Education to tell it if a program is working or not.

Environmental groups flock to the Interior Committee when they feel some administration policy is shafting them. Who is going to complain to a congressional intelligence committee? The Russian Ambassador?

Both the problem of the captive committee and the uninformed committee will be exacerbated for an intelligence committee because much of its work will be done behind closed doors where critics won't be able to point up foibles like they can with other committees.

Third, after the CIA's skeletons have been exposed, the dust has settled and the CIA is no longer Page One news, many members are likely to lose interest in the subject—including those assigned to an intelligence committee. Closed door meetings don't allow members to make speeches or issue press releases or titillate their constituents with inside stories.

Service on an intelligence committee may be a chore bringing no credit and less visibility.

None of this is to argue against formation of a standing committee. The point is simply that Congress must realize that when we seek to reform and improve the intelligence community, a congressional committee is supplemental and not elemental.

Having begun on a sour note by criticizing our own institutions here on Capitol Hill, let me now turn to the question of how to organize an oversight committee.

ORGANIZATION OF COMMITTEE

The first point to be decided is whether we want a single joint committee or parallel committees in the two houses. I opt for the latter. I think my earlier remarks about captive committees makes the reason clear. With separate committees there are twice as many elements that must be captured. With separate committees there is at least some semblance of competition.

The next question is the jurisdiction and authority of the committees:

They will need *oversight* authority which should extend into every nook and cranny of the intelligence community, both foreign and domestic. That authority can and should be shared with current standing committees. Then if the intelligence committees should become captives, others will still have the opportunity to keep watch over the community.

The intelligence committees will also need *legislative* authority and budget authority including power over an authorization bill that should cover not only the independent agencies like the CIA, but also the intelligence components of the military services, the State Department, the FBI.

It might appear a little cumbersome to have an intelligence committee dealing with just a segment of the State Department or FBI. But that authority is needed if you agree with me that one of the serious problems of the intelligence community today is the fact that nobody in Congress or in the Executive is in overall control of intelligence; it is a fragmented community that too often works at cross purposes or wastes time and money as two agencies duplicate one another's work or grind out a product for which there is no demand. One way to correct this is to put one pair of committees in charge.

If the committees lack the power of the purse, we will actually be in an even worse position than in the past. For the past few decades we have had ineffective subcommittees, but at least they held the purse strings and could theoretically have wielded that authority.

COVERT OPERATIONS

The next major issue is how the committees should deal with covert operations. Should the committees be notified in advance? Should the committees be empowered to veto planned operations?

Many reformers suggest that the committees be given real teeth and required to pass on all covert operations. But most members of Congress are reluctant to take a position on behalf of their colleagues. It's one thing to cast a vote on the floor as one of 435 members or one of 100; it's something else to be told to operate behind closed doors and make a decision for the rest of your colleagues.

I'm sure there are many in the Executive Branch who would like to see the Congress have veto power for exactly the same reasons that I'm sure most Members of Congress don't want that authority—because it gives future administrations an out. If an operation goes awry, the executive can point to Congress and say—as it did with the Gulf of Tonkin resolution—“but the Members authorized us to do that.” Members also know they could face the reverse charge: a stern administration saying, “The United States is in trouble in Majnoonistan today because Congress wouldn't let us launch a little cover operation.”

Such reluctance is not a political forecast; it's political history. For years the CIA has been telling those subcommittees about their covert operations, although

usually only after they began. The House Select Committee asked CIA Director William Colby what happened when one of the committees objected. Did that halt an operation? Colby was stunned. The question had never come up before. The subcommittees preferred not to get involved. Deniability was not invented by the Nixon Administration.

If a committee is to have veto power, then its political composition becomes terribly important. A committee filled with radicals probably wouldn't allow CIA agents to do anything more violent than play darts in the basement of CIA headquarters. Pack the committee with hawkish conservatives and you're back to square one. A congressional veto over covert operations is a very unpromising idea.

Many reformers also suggest that Congress can control covert operations through control of the budget. As I said before, I think any congressional committee should have the power of the purse. Still in intelligence there is not necessarily a correlation between money and mischief. In Thailand a CIA agent tampered with politics by sending one forged letter. The cost to the U.S. Treasury: one postage stamp. The cost to U.S. foreign policy: continuing embarrassment. Budget control is no panacea.

Covert actions must be controlled primarily from within the executive branch. To begin, the 40 Committee should be regulated by law rather than executive whim. Each member should be required to assess in writing every proposed covert operation, analyzing the risks involved, the benefits of success, the dangers of failure and possible alternative ways of accomplishing the objective. History shows that when men are required to write their own reports, they think more clearly of the consequences than if they are simply asked to initial a committee report.

A congressional committee can supplement these controls. Any intelligence committee must be told about all planned operations in advance—the entire committee, not just the leaders as in the past. While no approval or disapproval would be voted, individual members could send their own assessments to the President.

No doubt a lot of members would simply write up a list of reservations to cover themselves in case the operation went wrong. But that is not all bad. It is a good idea to have advice reaching the President from a few people who have a bias for negativism. There is too much me-tooism in the executive branch already.

The purpose of these changes and others under discussion by the House Committee is to build as many checks and questions as possible into the decision-making process so that no covert operation will be undertaken unless the arguments in favor of it are overwhelming.

Mr. Chairman and senators, I've touched on only three issues here today. There are many others. I will be happy to expand these points or address others at your pleasure.

**TESTIMONY OF HON. ROBIN L. BEARD, JR., A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF TENNESSEE**

Representative BEARD. Mr. Chairman, I have a very brief statement. I would like to read it in its entirety, if I may.

I appreciate this opportunity to testify and I plan to take very little of the committee's time in presenting my views on this issue. Prior witnesses have explored many important aspects of the subject, and I will try to avoid duplicating their testimony and repeat only those comments that bear repeating.

The purpose of my testimony is to bring to this discussion a unique personal experience in that last June, I did file a complaint against my colleague, Mr. Harrington, with the House Committee on Standards of Official Conduct. I took this action only when I discovered that Mr. Harrington admitted that he had revealed classified material to a number of unauthorized persons, including the news media.

Now, it is not my intention to take the committee's time reiterating the details of events surrounding that complaint. I would like to submit a copy of my complaint and the transcript of the Ethics Committee for the record, if I may.¹

Chairman RIBICOFF. Without objection, it will be printed at the conclusion of today's hearing record.

Representative BEARD. Because I feel it has bearing on the overall problem, I would like to summarize the major issues involved, as they do bear on the subject now before this committee.

After signing a pledge not to reveal the contents of classified information, a Member of Congress, by his own admission before a House investigating committee, did reveal such information to a number of staff members and to the press. The full contents of that information subsequently, one way or another, appeared as front page news stories in both the Washington Post and the New York Times.

Despite what was considered an obvious violation of House and committee rules, not one member of the committee involved filed a complaint against Mr. Harrington. When I discovered this, in all good conscience I filed a formal complaint with the House Ethics Committee and found that mine was the first complaint to be acted upon despite the committee's 8½ year's existence.

The series of events that followed clearly demonstrated why there had been and would continue to be a reluctance to deal with the problem of committee leaks.

The next several months saw seemingly endless debate over a series of legal questions, completely independent of the complaint itself; for example, the makeup of the committee, committee jurisdiction, the legal status of my complaint were all debated at length.

Although members of the Ethics Committee tried hard to execute their responsibility, I feel they must have been terribly frustrated as they worked their way through a maze of hazy rules and procedures. Finally, 6 months later, my complaint was dismissed on the technicality that the released material in question had not officially been taken in executive session.

While I understand that the committee's decision recognizes that the letter of the law was not violated, there is no question in my mind that the spirit of law was indeed violated.

Mr. Chairman, my point in relating this experience is to illustrate a number of points which should be of interest to this committee.

First: There is no question that information considered by all concerned to be classified was revealed to unauthorized individuals. In spite of this fact, no judgment was ever reached on the central issue—that is, whether or not a Member of Congress has the right to take it upon himself or herself to judge the contents and impact of secret information, and subsequently release that information for publication.

Mr. Harrington and I have a wide divergence of opinion on this issue. However, I feel that the essential point is that the interests of this Nation were not served by the absence of a final definitive judgment.

¹ See p. 372.

Second: Although a proper mechanism is said to exist for dealing with Members who violate their trust, it is considerably less than effective.

Third: If a member wishes to avoid a violation of trust, yet objects strongly to the classification of certain materials, the route he or she must follow to redress that grievance is as unclear now as it was prior to my complaint.

This committee has concerned itself with the structure of oversight. However, I respectfully suggest, that in addition to structural considerations, we must be willing to establish tough, uncompromising rules and relentlessly pursue violators.

My experience demonstrates that our rules are sadly inadequate to deal with this problem. Where rules do exist, we seem to have lost the will to swiftly and harshly punish violators, even though their action could severely impair our national security. Frankly, I find this frightening.

Recent congressional investigations have clearly demonstrated the need for Congress to exercise a more active oversight responsibility of the intelligence community.

However, recent events also indicate that there is perhaps a more pressing need to plug security leaks in both the legislative and executive branches.

This can be done by making it absolutely clear that such leaks will not be tolerated whether the violator is a Member of Congress, personal staff, committee staff, or executive agency personnel.

I would like to offer the following for your consideration—and several of the things I would like to offer, I am sure will raise constitutional questions, but I think that they also should be investigated—I feel that any oversight structure should follow the very simple principle that the number of people with access to classified information be kept to a bare minimum.

The rules of the Congress ought to be changed to provide for the immediate expulsion as a minimum penalty for a Member guilty of releasing information vital to our national security. The process to be followed should be clear and unequivocal.

Strict screening procedures including a prior security clearance should be followed in the hiring of committee staff. Harsh penalties should be provided for personnel found to be leaking secret information. Dismissal is simply not sufficient punishment to curb abuses.

The number of individuals with access to classified materials should be small and easily identifiable. If possible, and if proved to be worthy, lie detectors and testimony under oath should be employed to seek out those suspected of leaking information. The entire process must be swift and sure.

Strong bipartisan committee leadership is essential. Committees can be “leak-free” as Senator Baker has testified concerning the Joint Atomic Energy Committee.

Equally harsh criminal penalties must be provided for the same violations in the executive branch. Procedures to insure direct accountability—I feel this is very important—must be required wherever classified material is present. Legislation should be introduced, if it is not already present, to provide strict procedures and severe consequences for those outside of the legislative branch.

Mr. Chairman, our intelligence capability is a fundamental element in our national security. Increased legislative oversight of intelligence activities is both an essential and an appropriate function in a democratic society. However, it must be so constructed that it does not ultimately jeopardize our freedom.

Our system uniquely provides that Members of Congress and others may have access to sensitive materials. This assumes a very high level of individual responsibility.

Unfortunately, that assumption may no longer apply. It has recently become fashionable to divulge secret information and therefore a very few irresponsible individuals that choose to violate their trust will force the Congress to substantially revise and tighten our current system of procedures and penalties.

I trust that my personal involvement in this area will be instructive and helpful to the committee, and any further information that would be of interest I stand ready to provide.

Chairman RIBICOFF. Thank you very much, Congressman Beard. We do appreciate your favoring us with your testimony. I have no questions.

Senator Weicker?

Senator WEICKER. Just a few comments. I would be glad to have the Congressman respond.

We are here—the investigations that have taken place over the past year have not taken place because the problem is plugging security leaks. The problem is excessive secrecy which masks either the illegalities or the inefficiencies, whichever one you want to choose.

I would like to have your comment as to what you think the problem is.

Apparently, as I gather from your testimony, the problem is sort of shifting now as to how we plug leaks. Is not the problem past excessive secrecy?

Representative BEARD. Without any question, I am not here to defend the CIA or the executive branch, inasmuch as I think it is a proven fact they have overstepped their charter.

But the point that I am trying to make is that one of the reasons we will continue to have problems performing an effective oversight function is that we cannot expect members of the executive branch, members of the different agencies to provide what they consider to be secret information, critical to our national security if, after they provide that testimony, they walk out of the room and are hit with a headline on the front page.

I feel this is a problem, and I think this is an area of overreaction regarding the withholding of secrets from the American people. There is a happy medium. I feel that we have not found that happy medium. As a matter of fact, I think we have gone from one extreme to the other.

Senator WEICKER. Let me go over some of the matters that were in the category of leaks rather than matters presented by the appropriate agency or the executive branch. You tell me as to whether or not this information was properly put into the hands of the American people.

The American involvement in Angola?

The assassination of foreign leaders?

The bribes of Italian politicians by the CIA?

The slaughter of the Kurds, the overthrow of the government in Chile, the harassment of Martin Luther King?

I do not recollect that any of these matters were brought before the American people for their knowledge and judgment except by virtue of the fact that they came out in the course of congressional investigation.

Do you think that is proper or should we have left the situation as it was and let these matters remain secret?

Representative BEARD. It is very accurate, the statement you made, as far as areas you pointed out, that they are problem areas, without any question.

What the American people or the members of the media or the Members of Congress have failed to point out are some of the areas where we have been able to provide a positive function. As a result of that, I do think we have overreacted to the point that we have forgotten, or we do not seem to be sensitive about some of the good things that have happened and some of the necessary functions.

I wish I could sit here and say détente is a beautiful thing, we are walking around in brotherly love and hand in hand and that is the way it is going to be.

Now, unfortunately—and maybe I am paranoid about it—I do not think that is the way it is going to be. I think that we do need to have a viable intelligence community. I am not here to defend the actions of Martin Luther King's surveillance or assassination attempts or whatever. I am looking at the future, and that is the reason I am testifying, to show some of the problems that I have experienced individually and I think other Members of Congress have experienced as to the lack of total direction. We can have all the structures we want to, but until we have it firmed up in our own mind, whether it be along my way of thinking or along Mr. Harrington's way of thinking or whatever. I respect him for his philosophy. I do not question that.

But I think that the problem is that Mr. Harrington found some of the same frustrations as to what are the guidelines that are directing the committees and the Members of Congress, and I do not think they are set forth in a very standard pattern.

Senator WEICKER. The function of this committee is to try to structure a mechanism, a vehicle for the future, insofar as for preserving our intelligence and law enforcement capability, but the one thing that we do know—and correct me if I am paraphrasing you incorrectly—that the theory of the fewer the better insofar as knowledge has not worked. That is exactly the system.

In other words, John McCone was here a few days ago. I have great respect for the man. I think he performed very well in his time. But when confronted with an Angolan-type situation, he said I would get together with Senator Stennis, Senator Russell, we would talk it over and that would be it.

Unfortunately the coinage will not be paid by Senator Stennis and Senator Russell and Mr. McCone alone. The price nowadays falls on the shoulders of all Americans.

I just wonder. Are you for oversight?

Representative BEARD. Yes, I am. In fact, I favor a joint committee. I feel that this would be more productive versus two individual committees.

When I talk about the fewer the better, I am just not referring to the Members of Congress and their staffs. I am not saying here that all leaks have come from the legislative branch. I feel that there need to be strict controls in the executive branch. If we are to be charged with seeing that we keep our own house in order, then the members of the executive branch should also be charged with that to the point that when there is top secret material, and if it is legitimately top secret material, then it should not be handed around like a morning newspaper over in the Pentagon or over in the CIA headquarters without some type of accountability.

Senator WEICKER. The difficulty that I have are the matters that I have mentioned to you, and they are the ones that are leaks. Those are not leaks. That is information that the American people should have.

The matter of, let me say, the names of the agents abroad. This was not done by a congressional committee. This was done by a magazine abroad. I grant you that was improper information. There seems to be a blurring, or a calculated attempt to blur, that type of information that both of us would agree should remain secret, the names and locations of agents, with this information. The list of improper activities which we went over, as far as I am concerned, is not being leaked at all. As a matter of fact, it ought to be out right there on the table for the American people.

During the Watergate, I used to be accused of leaking the questionable or illegal activities of the President and his administration. That is rather interesting. That is not leaking, that is just setting the facts out there where people can make their judgment.

I am bothered by this sort of loose use of the word "leak." I think I understand, I think all of us do. Those areas that are classified, they should generally remain secret whether you are talking about the sources of information, names, locations, all of this properly is kept secret.

But I have yet to see—I asked this question the other day and I am going to have a response from Secretary Ellsworth—I have yet to see anything of a national security nature leaked. I have seen questionable practices and illegalities brought to fore. That, to me, is a valid and, indeed, an honorable function.

I fail to see national security information come forth. Have you?

Representative BEARD. Not critical.

Senator WEICKER. I have not, either.

Representative BEARD. I hope that is not the attitude that is going to direct your actions on this committee, the fact that you have yet to see, personally, any critical national security.

The main motivation for filing my charges against my colleague was not because of the information he released, because I personally feel it was inconsequential. But the fact is the rules were violated.

Senator WEICKER. I do not want to get into your particular controversy.

Representative BEARD. I appreciate that. The fact is, hindsight is the best sight, and we can sit here and we can talk about the kinds of decision to release this, whether it be in the Watergate or decisions to release that—that is a wonderful thing, to provide the American people—which I think is necessary—within the realm of the people's right to know. But I would hope that you would look into the future, what happens that day that something is released that is critical?

If we cannot sit here in all our glory in our little white houses and clean up our own act. Your line of questioning is one—should not the American people know? Well, yes. There are things they should know. They have a right to know. But I am a realist and I would hope that the members that make these decisions are realists to the point that they recognize there are some things that cannot be broadcast and that one individual member should not be the one to make a judgment on every particular piece of classified material.

With 435 Members in the House of Representatives, with all types of backgrounds and philosophies, making their own decisions outside the rules of the House, to me, if you want to be emphatic about it, that could lead to anarchy. If we cannot live by our own rules, why have them, why even have the rules?

Senator WEICKER. That of course is, as I said—without getting into the controversy as to what your matter is with Mr. Harrington and the House rules, the concern of this committee is the violation of rules. Rules have been violated in the past as far as the activities of these agencies are concerned.

What are we going to do?

Of course, I am obviously interested in your hypothetical for the future, but I have before me a fact, that of excessive secrecy that has led to fantastic abuses and illegality. That is a fact.

I grant you, I think we should always anticipate and go to the future, but let us clean up this little mess in the past first.

Thank you, Mr. Chairman.

Chairman RIBICOFF. Thank you very much, Congressman Beard.

Senator Thurmond?

**TESTIMONY OF HON. STROM THURMOND, A U.S. SENATOR FROM
THE STATE OF SOUTH CAROLINA**

Senator THURMOND. Thank you, Mr. Chairman.

I appreciate the opportunity to address a matter of such great national importance as intelligence; the Armed Services Committee has always recognized the invaluable contribution made by our Nation's intelligence agencies. The collection and analysis of intelligence has always been absolutely vital to the national defense and security.

Most recently, of course, the work of the Senate Select Committee on Intelligence has highlighted for the Congress as well as for the country, the undeniable need for both responsive intelligence and responsive oversight. The work of the select committee has, in fact, inspired the Senate Armed Services Committee to review most carefully its own mandate in the field of intelligence.

Our examination has impressed me anew with the singular importance of intelligence activities. Yet, our study has just as strongly convinced me that a new and separate oversight committee would poorly serve the intelligence needs of our Nation. Legislation as currently proposed would not, in my opinion, either strengthen our intelligence capabilities or insure responsible oversight.

A standing committee would merely hobble executive initiative and facilitate unauthorized disclosure. In addition, the proposed committee would unduly centralize our intelligence efforts, cripple our ca-

capacity for covert action and split intelligence functions from their matrix in national defense, foreign relations, and law enforcement.

What, in essence, is wrong with the pending proposal is its spirit which evinces an unreasonable distrust of the Executive to conduct responsible intelligence activities.

Where the proposed legislation is mistaken is in its thrust, which aims for unnecessary and miserly hoarding of intelligence authority and an unjustified concentration of control.

Let me be specific. Section 5 of the bill, for instance, lays claim to the intelligence functions of the Department of Defense, the Department of Justice, the Department of State, and the Department of the Treasury.

Besides offering no explanation for divesting Armed Services, Foreign Relations, Judiciary and Finance of their present and accustomed jurisdictions, some of the bill divorces the intelligence functions of the foregoing departments from their substantive work without conferring any corresponding benefit.

Armed Services, theoretically, could consider tactical intelligence, but not national defense intelligence; Judiciary, theoretically, could examine entrapment, but not the use of FBI informants; Foreign Relations, in theory, could review foreign aid, but not our national intelligence estimates; and Finance could scrutinize the registration of firearms, but not how the Secret Service responds to the threatened use of unregistered firearms against the life of the President.

Section 5 also vests exclusive jurisdiction over the CIA, the DIA, and the NSA in the same committee, without adducing justification or explanation for the unprecedented concentration of control in such an unprecedented fashion.

No claim for special expertise has been made in the name of the proposed committee and no reason has been set forth for (a) appointing members by the Senate leadership, rather than by the full Senate following nominations by party conference—Section 4(a); (b) limiting senatorial service to 6 years—Section 4(b); (c) permitting service on the proposed committee regardless of other committee assignments—Section 5(c); and (d) limiting professional staff tenure.

This last proposal, by the way, not only stymies the development of professional expertise, but is in direct contravention of the Legislative Reorganization Act of 1970 which provides for permanent appointment of professional staff. The previous proposals, I need not remind you, are a direct and inexplicable affront to the seniority system in an area where seniority and continuity are so obviously needed.

Furthermore, the bill introduced by Senator Church makes no adequate provision for the inevitable overlap of jurisdiction which it spawns and for the duplication of oversight responsibilities it engenders. Yet another committee must be advised of our sensitive intelligence operations and yet another staff must be made privy to the most delicate secrets of State.

Equally important considerations of secrecy are similarly ill-served by the pending legislation. Provisions regarding referral to the full Senate of committee information are only a little less devastating to confidentiality than are the public disclosure provisions.

For instance, the Church bill authorizes the proposed committee on intelligence activities to release, unilaterally, any information

whatsoever, regardless of the President's request that it be kept secret or that the decision to release be made by the full Senate.

Language permitting full public disclosure of classified information, coupled with a lack of sanctions stronger than general admonitions, virtually invites unauthorized disclosure and practically assures security violations.

Moreover, the pending bill apparently contemplates sharing secret information so widely and so often that the information is, by definition, no longer a secret. The recent tragedy in Athens is more convincing than are any words of mine that classified information whether it be the names of agents or the existence of operations, has a life and death significance. That significance is little appreciated by the proposed legislation.

Moreover, little understanding of either foreign affairs or Presidential prerogative is reflected in the proposed oversight bill. The prior restraints on Executive action contemplated will not only stay the President's hand in the conduct of our foreign affairs, but will intrude the legislature into the sphere of the Executive.

The pending proposal will confuse and commingle the separate powers of the two branches by making of the Senate, not a separate and equal partner in the determination of our foreign affairs, but an arbiter, a competitor, and an intruder in the conduct of our foreign policy.

The prior approval provisions mean that the U.S. Senate will act as either a brake or as a spur to significant and secret segments of foreign policy.

It is a role we are poorly equipped and traditionally unwilling to assume. The Senate has neither the means nor the mandate to conduct any specific aspect of foreign affairs, much less covert and clandestine operations.

The bill you are considering presumes we deserve such an authority without providing the concomitant capability. Its failure, in this respect, is, of course, a failure to recognize and honor the essential distinctions between the Executive and the legislative. If for no other reason, that failure alone merits this bill's disapproval.

Let us not, by simple self-abrogation, leave the President stripped of any power to advance our interests abroad short of war. Let us not, by misplaced concern, leave the President with only the options of a diplomatic protest or a military invasion. Let us not, by myopia or mistake, leave this legislation with the power to confuse our respective roles and compromise our respective powers.

Thank you very much.

Chairman RIBICOFF. Thank you very much. We do appreciate having your point of view.

Senator Weicker?

Senator WEICKER. Senator, just two questions.

I do not understand what Athens has to do with congressional oversight or the investigations here in the Congress. I was not aware that anything that was done by the Congress led to the tragic events in Athens.

Senator THURMOND. Well, the names of the CIA agents over there were published.

Senator WEICKER. Were they published by the Members of Congress?

Senator THURMOND. No, they were published in the papers, but a similar situation would happen if the Congress gets all the information here, knowing how things leak from the Senate and the House too, because they have leaked. Some have deliberately given secrets to the press, and I think these individuals are jeopardizing the intelligence agents of this Government.

I know if I were in the service I would not want my name spread over the news. That is exactly what the enemy wants to know.

It hampers their efforts, it identifies them, it makes them ineffective.

Senator WEICKER. Senator, again I was not aware that any committee or any member of the committee had divulged the names of any agents.

I wonder if you might tell us exactly what secrets have been leaked in the past several months?

Senator THURMOND. I think that the record speaks for itself, the items that have been leaked. I do not think there is any doubt about the statements that have been made over in the House recently, the statements that have been given out over there.

It can be very harmful. Intelligence is a very delicate commodity. If you have a good intelligence force which can keep a secret, it can be most valuable, and if you collect intelligence, if it cannot be kept secret, it is not worth the time and the effort that it takes to gather it.

Senator WEICKER. I concur with you, Senator. It is not the object of this committee to hamper intelligence, but to help it.

But I would specifically like to know what secrets have been leaked to the members of the press in the last months?

Senator THURMOND. A number of items have been leaked. You have read them in the papers. I do not remember the details.

You have heard the controversy about it on radio and TV and even in the newspapers themselves.

Senator WEICKER. I have heard persons term illegal and questionable activity's being brought to the attention of the American people as a leak. I do not think that is a leak. That is what I am asking.

What secrets have been leaked?

I would certainly be horrified and opposed to the leaking of a secret. I would like to know what secret has been leaked.

Senator THURMOND. I think that any matter that would help aid the enemy is a secret, and I think many times we have held in the Senate secret meetings and within 10 minutes after that meeting exactly what went on in there went out, and yet that was a secret meeting.

I hate for it to occur.

Several years ago, when I called the secret session of the Senate on the ABM missiles, and it was not but a few minutes when everything that went on in there was exposed to the public.

Senator WEICKER. I have no further questions.

Chairman RIBICOFF. Thank you very much, Senator Thurmond.

The committee will stand adjourned until Thursday morning at 10 o'clock.

[Whereupon, at 12 noon the hearing was recessed, to reconvene Thursday, February 5, 1976 at 10 a.m.]

[The following information was supplied for the record by Congressman Beard:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 18, 1975.

HON. JOHN J. FLYNT, JR.,
Chairman, Committee on Standards of Official Conduct, U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: On Monday, June 16, 1975, the Committee on Armed Services, in open session, a quorum being present, reaffirmed action it had previously taken directing an inquiry to your Committee requesting guidance on the accessibility of Committee documents to Members of the House of Representatives.

I understand that the Committee on Armed Services has officially transmitted to you, by letter dated June 11, 1975, a copy of the motion approved by the Committee on Tuesday, June 10, 1975.

As you will notice, the second paragraph of that motion identified Congressman Michael Harrington, of the State of Massachusetts, as having been "denied access to any Committee files or classified information maintained therein because of his previous refusal to honor House and Committee Rules regarding material received by the Committee in executive session."

I further understand that your Committee has been given access to a copy of a hearing conducted by the Special Subcommittee on Intelligence of the Committee on Armed Services on September 25, 1974, in which Congressman Michael Harrington appeared before the Committee and, while under oath, acknowledged his violation of certain House and Committee Rules. Specifically, among other things, Congressman Harrington acknowledged that he was aware of House Rule XI, Clause 27 (c) (93d Congress), which provides as follows:

"No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Committee."

Further, Congressman Harrington acknowledged that he was aware of Armed Services Committee Rule No. 10, for the 93d Congress, which provides for the adequate safekeeping of national security information and which authorizes the Chairman of the Armed Services Committee to promulgate such additional rules as may be necessary to adequately provide for the protection of classified information in the Committee files. A copy of these rules has also been provided your Committee.

The Committee Rules state that only Members of Congress may have access to classified information obtained by the Committee in executive session and bearing a classification of secret or higher, and further that such information will not be divulged to any unauthorized person in any fashion. Congressman Michael Harrington (D-Mass.) obtained access to such classified Committee information, which had been obtained in executive session, on June 4 and June 12, 1974, under the provisions of Rule XI, Clause 27 (c) (93d Congress) which provides that Committee hearings, records, files, etc., shall be the property of the House, and all Members of the House shall have access to such records.

At the time Mr. Harrington was given access to these documents on June 4 and June 12, 1974, he acknowledged in writing, with his personal signature, his awareness of the House and Committee Rules regarding the restrictions on the use of this information.

Subsequent to Mr. Harrington's access to this information which consisted of a Committee transcript, dated April 22, 1974, in which the Director of the Central Intelligence Agency discussed the Agency's previous activities in Chile, important portions of the information contained in the transcript appeared in the news media. As a consequence, the Special Subcommittee on Intelligence of the Armed Services Committee convened a hearing on September 25, 1974, to ascertain the manner in which Congressman Harrington utilized the information made available to him in the Committee files.

As I have previously indicated, Congressman Harrington did, during that hearing, and while under oath agree that he had been aware of the Committee and House Rules regarding this matter and notwithstanding that fact had made the information provided him in the Committee files available to unauthorized persons, to wit: various individuals not involved in the Congressional process. The details concerning his admissions are reflected in the Committee transcript of September 25, 1974.

Finally, I call your attention to the "Code of Official Conduct" of the House of Representatives, which in Clause 2 provides as follows:

"2. A Member, officer, or employee of the House of Representatives shall adhere to the spirit and the letter of the Rules of the House of Representatives and to the rules of duly constituted committees thereof."

In view of these circumstances, and because of the blatant disregard of the House and Committee rules by Congressman Harrington and because of the grave implications to both the Congress and the national security that will result if action of this kind is not deterred in the future, I am requesting that your Committee proceed to investigate the official conduct of this Member of Congress in this matter, and after notice and hearing, to recommend to the House, by resolution or otherwise, such action as the Committee may deem appropriate in the circumstances.

I will assume that the Committee on Standards of Official Conduct will give this complaint a full and complete review with appropriate recommendations to the House or, in the alternative, I will be forced to utilize other avenues to insure that the Members of the House of Representatives will be given an opportunity to act in the premises.

I solemnly swear that the information contained in this letter is, to the best of my knowledge and belief, accurate and reflective of the facts in this matter.

Sincerely,

ROBIN L. BEARD,
Member of Congress.

[H.A.S.C. No. 94-12]

INQUIRY INTO MATTERS REGARDING
CLASSIFIED TESTIMONY TAKEN ON
APRIL 22, 1974, CONCERNING
THE CIA AND CHILE

H E A R I N G
BEFORE THE
SPECIAL SUBCOMMITTEE ON INTELLIGENCE
OF THE
COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES
NINETY-THIRD CONGRESS
SECOND SESSION

WEDNESDAY, SEPTEMBER 25, 1974



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SPECIAL SUBCOMMITTEE ON INTELLIGENCE

(93d Congress)

LUCIEN N. NEDZI, Michigan, *Chairman*

F. EDWARD HÉBERT, Louisiana

WILLIAM G. BRAY, Indiana

MELVIN PRICE, Illinois

LESLIE C. ARENDS, Illinois

O. C. FISHER, Texas

BOB WILSON, California

FRANK M. SLATINSHEK, *Chief Counsel*

WILLIAM H. HOGAN, Jr., *Counsel*

SPECIAL SUBCOMMITTEE ON INTELLIGENCE

(94th Congress)

LUCIEN N. NEDZI, Michigan, *Chairman*

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FRANK M. SLATINSHEK, *Chief Counsel*

WILLIAM H. HOGAN, Jr., *Counsel*

(II)

[H.A.S.C. No. 94-12]

**SPECIAL SUBCOMMITTEE ON INTELLIGENCE INQUIRY INTO
MATTERS REGARDING CLASSIFIED TESTIMONY TAKEN ON APRIL
22, 1974, CONCERNING THE CIA AND CHILE**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SPECIAL SUBCOMMITTEE ON INTELLIGENCE,
Washington, D.C., Wednesday, September 25, 1974.

The special subcommittee met, pursuant to call, at 10:38 a.m. in room 2337, Rayburn House Office Building, Hon. Lucien N. Nedzi (chairman of the subcommittee), presiding.

Present: Representatives Nedzi, Hébert, Bray, Arends, and Wilson.

Also present: Frank M. Slatinshek, chief counsel and William H. Hogan, Jr., counsel.

Mr. NEDZI. The subcommittee will come to order.

We do have a quorum present and in order that the record may be clear I would like to state that this hearing is being conducted to inquire into the procedures regarding classified testimony taken by this subcommittee in executive session on April 22, 1974, concerning the alleged involvement of the CIA in the overthrow of the Allende government in Chile.

In this regard I would like to enter into the record the letter from Chairman Hébert to me concerning these hearings and authorizing the taking of sworn testimony and issuance of subpoenas if necessary.

Would you read that into the record, Mr. Hogan?

[Mr. Hogan read the following letter:]

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Washington, D. C., September 23, 1974.

HON. LUCIEN N. NEDZI,
Chairman, Special Subcommittee on Intelligence, House Armed Services Committee, U.S. House of Representatives, Washington, D.C.

DEAR MR. NEDZI: This will confirm our recent decision to commence hearings in the Intelligence Subcommittee on or about September 25, 1974 to inquire into the recent public disclosure of classified testimony taken by the Subcommittee in executive session on April 22, 1974, in connection with the alleged involvement of the CIA in the overthrow of the Allende government in Chile.

For the purpose of fully discharging its responsibilities and completing the inquiry, as Subcommittee Chairman you are hereby vested with the authority granted and conferred by Section 2(a) of House Resolution 185, 93d Congress to swear witnesses and to require by subpoena or otherwise, the attendance and testimony of such witnesses and production of such books, records, correspondence, memoranda, papers and documents as may be necessary.

Sincerely,

F. EDW. HÉBERT, *Chairman.*

Mr. NEDZI. The rules of the House require that the subcommittee hearings be announced one week in advance unless the subcommittee

(1)

for good cause elects to hold the hearings at an earlier date, and let the record show that Chairman Hébert's concurrence with the public announcement of the meeting on September 23, 1974 has been made.

At this time I will recognize Mr. Bray for a motion.

Mr. BRAY. Mr. Chairman, I move the subcommittee now go into executive session.

Mr. HÉBERT. I second the motion.

Mr. NEDZI. Will you poll the members please?

Mr. SLATINSIEK. Mr. Nedzi,

Mr. NEDZI. Aye.

Mr. SLATINSIEK. Mr. Hébert.

Mr. HÉBERT. Aye.

Mr. SLATINSIEK. Mr. Price.

Mr. PRICE. (No response.)

Mr. SLATINSIEK. Mr. Fisher.

Mr. FISHER. (No response.)

Mr. SLATINSIEK. Mr. Bray.

Mr. BRAY. Aye.

Mr. SLATINSIEK. Mr. Arends.

Mr. ARENDS. Aye.

Mr. SLATINSIEK. Mr. Wilson.

Mr. WILSON. Aye.

**STATEMENT OF HON. MICHAEL HARRINGTON, REPRESENTATIVE
FROM MASSACHUSETTS**

Mr. HARRINGTON. Mr. Chairman, I think it might be, if I may have your permission to be heard while we still have an audience, useful to renew a request I made of you yesterday afternoon to consider the usefulness from any perspective one would choose to arrive at of open session on the question that you pose this morning, and further to indicate that despite the stridence of the language that was used in the letter that has been made a part of the record, that a conversation occurred between yourself and myself on about September 12 of this year asking whether or not I would be willing to come before this committee to meet with them and discuss the subject which has prompted this meeting this morning, and further that I agreed readily to do so, suggesting that the meeting could be held that afternoon if it were convenient to the members, and that if any confusion ensued, which I have no objection to, attendant to setting of the date of the meeting, it ensued largely because of apparently a lack of effective communication mutually on the question of a date, but there has been no effort made at not being willing or not being entirely in concert with what you state as one of the interests you have in calling the meeting on my part.

Mr. NEDZI. The Chair will state in response that he confirms what the gentleman from Massachusetts has said.

On my first call to him he expressed readiness and willingness to attend the hearing at a mutually agreeable time. In fact we talked about one within a day or two, but because of the gentleman's schedule and the Chair's schedule we could not arrange a date prior to today. There was some confusion between the Chair and counsel for the subcommittee, each thinking that the gentleman from Massachusetts had been contacted, and at no time was there any suggestion of unwillingness on the part of the gentleman from Massachusetts to appear before the subcommittee to testify.

Mr. HARRINGTON. My only other procedural question, and one that may appear to be somewhat insensitively offered, is that I, in coming here freely this morning and in hoping that you might reconsider the usual setting for meetings of this kind and leave it open, would expect that since I am obviously a principal to this morning's proceeding that I have a copy of the transcript of this morning's proceedings with you before it is made a part of any record.

Mr. NEDZI. The Chair at the moment sees no objection to that, but we will have to put that to the subcommittee.

Mr. HARRINGTON. It would seem to me to be in a sense an unnecessarily, if this is voluntarily arrived at, causing problems about—

Mr. NEDZI. Let me say that witnesses before the committee have access to the transcript as a matter of course.

Mr. HARRINGTON. Would you describe access to me so that I have a clear understanding of what that means in this instance?

Mr. SLATINSIEK. Mr. Chairman, if I may interrupt, that means that the witness will review the transcript in the committee hearing room or in the committee rooms. The traditional procedure of the committee does not require that we provide the witness with a copy of the transcript. We simply make the transcript available to him for editorial changes and grammatical changes in his testimony and for an opportunity to review the testimony that he provided the subcommittee or the committee. This is the traditional manner in which the committee operates.

Mr. HARRINGTON. Let me then restate my request, that because of the nature of the hearing, because of the background, this being requested of me, I would ask that I have not just access to the material, but have a copy of the record for whatever use I may choose to make of it.

Mr. NEDZI. The Chair will restate his response to the gentleman. That matter will be put to the subcommittee and the gentleman will be advised.

Mr. HARRINGTON. I think it is important to be understood before proceeding in terms of my own sense of the need for this and the need not to rely on the usual method of operation, and I would expect that the gentlemen sitting beside you might, given the reversal of roles, as much as they might think that unlikely, want the same courtesy afforded them.

Mr. NEDZI. I hear what the gentleman is saying but, unfortunately, we don't know what kind of information is going to be disclosed in the course of the hearing and because of the experience that the subcommittee has had there is some question with respect to the procedures in handling classified information.

Consequently, I don't think that the subcommittee is in position to respond to the gentleman's request at this time, at this point in time, as they say in Washington.

Mr. HARRINGTON. I find myself somewhat puzzled only that the essence of the information that is the subject of concern has been at least in the broadest sense endorsed or ratified by the President of this country and by the Director of the Central Intelligence Agency.

What else is there in terms of your concern that would prompt a further concern about wanting to have a proceeding that I am the central figure in available to me on something other than the usual Armed Services Committee basis.

Mr. NEDZI. Well, the Chair will state that he is not in position to accede to the gentleman's request at this time and the gentleman, of

course is free to refuse to testify under the arrangement. That is up to him.

Mr. HARRINGTON. I have never really been remotely inclined to refuse to testify. I am just really attempting to establish, so we have no ambiguity, and a feeling that I think is an entirely defensible one, that the reason for the hearing is obvious; the witness that you have is essential to the hearing. I would certainly not find it satisfactory to accept, even by my silence or any ambiguity about my response, Mr. Slatinshek's definition of what access means.

Without protesting that I think it violates essentially what would be my rights prospectively.

Mr. NEDZI. I think that we have gone as far as we can go on the point and the vote being 5 to 0 in favor of an executive session the Chair will announce the subcommittee will now go into executive session.

[Whereupon, at 10:49 a.m. the special subcommittee recessed to go into executive session.]

The special subcommittee met, pursuant to open session, at 10:50 a.m. in room 2337, Rayburn House Office Building, Hon. Lucien N. Nedzi (chairman of the subcommittee) presiding.

Present: Representatives Nedzi, Hébert, Bray, Arends, and Wilson.

Also present: Frank M. Slatinshek, chief counsel and William H. Hogan, Jr., counsel.

Mr. NEDZI. May we ask counsel to read a memorandum for the record dated September 12, 1974.

Mr. SLATINSHEK. I am reading a memorandum for the record dated September 12, 1974:

[The following information was received for the record:]

MEMORANDUM FOR THE RECORD

SUBJECT: APPARENT MISUSE OF INFORMATION RECEIVED BY A MEMBER OF CONGRESS FROM HIS REVIEW OF AN EXECUTIVE SESSION TRANSCRIPT OF THE ARMED SERVICES SUBCOMMITTEE ON INTELLIGENCE

1. The New York Times, on Sunday, September 8, 1974, carried a story, dateline Washington, September 7, 1974, by Seymour Hersh, containing information allegedly obtained by Congressman Michael Harrington (D-Mass.) from his reading of the Subcommittee on Intelligence transcript dated April 22, 1974.

2. Congressman Harrington had obtained access to this transcript, classified "Top Secret", by virtue of his oral request to Subcommittee Chairman Lucien N. Nedzi, and the subsequent approval of Chairman F. Edw. Hébert. Access to the transcript was provided Mr. Harrington with the clear understanding that availability of the transcript was subject to both the Rules of the House of Representatives and the Rules of the Committee on Armed Services.

3. By way of background, Rule XI, Clause 27(c), provides that all Committee hearings, records, files, etc., shall be the property of the House and all Members of the House shall have access to such records.

4. House Rule XI, Clause 27(o) provides as follows:

"No evidence or testimony taken in executive session may be released or used in public sessions without the consent of Committee."

5. In view of the access of Members to all documents and data received by the Committee as provided by Rule XI, Clause 27(c), and the limited safeguard on the utilization of this material as provided by Rule XI, Clause 27(o) being limited to executive session material, there remained a serious question as to how the Committee on Armed Services could provide adequate security on confidential material received by the Committee outside of executive session as well as material of a particularly sensitive nature.

6. In view of these circumstances, the Committee, on February 27, 1973, in establishing its Committee Rules, included in Rule No. 10, the following language:

"All national security information bearing a classification of secret or higher which has been received by the committee or a subcommittee of the Committee on Armed Services shall be deemed to have been received by the Committee in executive session and shall be given appropriate safekeeping."

7. Pursuant to Committee Rule No. 10, Chairman Hebert, on April 3, 1973, promulgated rules providing for the proper protection of classified information in the Committee files and making this material available to Members of the House of Representatives.

8. As previously indicated, Congressman Harrington requested access to a Top Secret transcript of testimony received in executive session by the Subcommittee on Intelligence on April 22, 1974. The testimony was provided by the Director of the Central Intelligence Agency and related to his Agency's activities in Chile.

9. In accordance with the Committee Rule, Congressman Harrington contacted the Chief Counsel of the Committee, Mr. Slatinshek, and was given access to the transcript in question. However, before being provided the transcript, Congressman Harrington was, in accordance with the Rules established by the Committee on Armed Services, asked to read the Rules applying to Members of the House who requested access to classified information in the Committee files. Congressman Harrington was handed these Rules; and after perusing these Rules, signed a statement, which reads as follows:

"I have read the Rules of the Committee on Armed Services relative to access by Members of the House of Representatives to classified information in the Committee files, and I agree to honor those rules."

10. A copy of the Committee Rules is attached as promulgated by Chairman Hebert by letter dated April 3, 1973. Also included is a copy of Armed Services Staff Memorandum 93-4, dated April 5, 1973, calling attention to these Rules to the members of the staff handling classified material.

SUMMARY

The news article appearing in the *New York Times* and other news media throughout the country indicates that Congressman Harrington had addressed a "confidential seven-page letter . . . to Representative Thomas E. Morgan, chairman of the House Foreign Affairs Committee, [which] was made available to the *New York Times*." Other news media articles indicated that a similar letter was sent by Congressman Harrington to Senator Fulbright, Chairman of the Senate Foreign Relations Committee.

At this point in time, it is evident that the information received by the Armed Services Subcommittee on Intelligence was leaked to the news media. However, no information is presently available to the Committee on Armed Services which would indicate the manner in which this information was leaked to the news media except that it appears evident that this information was obtained as a result of Congressman Harrington's review of the Subcommittee testimony and his subsequent correspondence with the Chairmen of the House Foreign Affairs and the Senate Foreign Relations Committees.

It is apparent that the Committee on Armed Services must take appropriate measures to insure that security leaks of this kind can not occur in the future.

In addition to the problem confronting the Committee on Armed Services, there is also a problem directly involving the House Rules. Since House Rule XI, Clause 27(a) precludes the use of executive session testimony unless authorized by the Committee, it appears evident that a direct violation of this House Rule is also involved.

FRANK M. SLATINSHEK, *Chief Counsel*.

Mr. SLATINSHEK. Attachments to this memorandum include a copy of the committee rules promulgated by Chairman Hebert by letter of April 3, 1974, the Armed Services Staff Memorandum No. 93-4 of April 5, 1974, and a copy of the statement signed by Congressman Michael Harrington on the 2 days on which he had reviewed this testimony and this transcript. The dates were June 4, 1974, and June 12, 1974.

With the permission of the Chair I would like to include this memorandum as I have read it in the record.

Mr. NEDZI. Including the attachments.
 Mr. SLATINSHEK. Including the attachments.
 Mr. NEDZI. Without objection it will be entered into the record.
 [The following information was received for the record:]

U.S. HOUSE OF REPRESENTATIVES,
 COMMITTEE ON ARMED SERVICES,
 Washington, D.C., April 3, 1973.

MEMORANDUM FOR: FRANK M. SLATINSHEK, CHIEF COUNSEL.

SUBJECT: RULES FOR ACCESS BY MEMBERS TO CLASSIFIED INFORMATION IN THE
 COMMITTEE FILES

The Rules Governing Procedure in the 93rd Congress adopted by the Committee charge me with the responsibility for proper protection of classified information in the Committee files and at the same time to provide for access to such material by Members of the House of Representatives.

Accordingly, I have prepared the attached set of rules on the subject for appropriate implementation.

Sincerely,

(S) F. Edw. LIEBERT, *Chairman*.

RULES OF THE HOUSE ARMED SERVICES COMMITTEE TO BE FOLLOWED BY MEMBERS OF
 CONGRESS WHO WISH TO READ CLASSIFIED INFORMATION IN THE COMMITTEE FILES:

(1) Classified information will be kept in secure safes in the committee rooms. Members will be admitted to the reading room (Room 2114-A) after inquiring of the Executive Secretary in Room 2120, extension 54151.

(2) Before receiving access to such classified information Members of Congress will be required to identify the document or information they desire to read, identify themselves to the staff member assigned and sign the Secret Information Sheet, if such is attached to the document.

(3) The reading room will be open during regular committee hours.

(4) Only Members of Congress may have access to such information.

(5) Such information may not be removed from the reading room, and a staff member will be present at all times.

(6) The staff member will maintain an access list (log) identifying the Member, the material and the time of arrival and departure of all Members having such access to such classified information.

(7) A staff representative will ensure that the classified documents used by the Member are returned to the proper custodian or to original safekeeping as appropriate.

(8) No notes, reproductions or recordings may be made of any portion of such classified information.

(9) The contents of such classified information will not be divulged to any unauthorized person in any way, form, shape or manner.

(10) The log will contain a statement acknowledged by the Member's signature that he has read the committee rules and will honor them.

U.S. HOUSE OF REPRESENTATIVES,
 COMMITTEE ON ARMED SERVICES,
 Washington, D.C., April 5, 1973.

ARMED SERVICES STAFF MEMORANDUM No. 93-4

SUBJECT: RULES FOR ACCESS BY MEMBERS OF THE HOUSE OF REPRESENTATIVES TO
 CLASSIFIED INFORMATION IN THE COMMITTEE FILES

Rule No. 10 of the Rules of Procedure for the operation of the Committee during the 93rd Congress, adopted by the Committee on February 27, 1973, charge the Chairman with the responsibility for proper protection of classified information in the Committee files. The third paragraph of Rule No. 10 reads as follows:

"The Chairman of the full committee shall establish such procedures as in his judgment may be necessary to prevent the unauthorized disclosure of any na-

Pursuant to Rule No. 10, cited above, there is attached the self-explanatory rules prescribed by the Chairman for access by Members of the House of Representatives to classified information in the Committee files.

FRANK M. SLATINSHEK, *Chief Counsel.*

[illegible]

Mr. HARRINGTON. I have a total facsimile.

Mr. NEDZI. Mr. Harrington, could you tell us what you did with respect to this information that was secured—

Mr. HÉBERT. May I interrupt?

Mr. NEDZI. Mr. Hébert.

Mr. HÉBERT. It is usual when the committee has conducted hearings to place all witnesses under oath, and I suggest you have Mr. Harrington, if he is willing, take the oath.

Mr. HARRINGTON. Certainly.

Mr. NEDZI. Any objection?

Mr. HARRINGTON. No, I think it is a procedure that might be applied more often to executive branch members, too. But I am glad to.

Mr. NEDZI. Will you raise your right hand.

[Witness sworn.]

**TESTIMONY OF HON. MICHAEL HARRINGTON, REPRESENTATIVE
FROM MASSACHUSETTS**

Mr. NEDZI. As I stated earlier, could you tell us how you handled the information or what you did with the information which was secured as a result of examining the transcript of April 22?

Mr. HARRINGTON. Sure. At what point, so that I don't really occupy too much of your time, Mr. Chairman, would you like me to try to begin? I can give you any kind of background you would like or anything useful for the proper setting.

Mr. NEDZI. Any disclosure of that information to any individuals.

Mr. HARRINGTON. All right. Why don't we take it from about the point you and I began in April and move quickly into June, which appears to be the subject of your interest, and I will make a statement and answer any questions you want to try to have answered that aren't part of what I originally included in my statement.

As you know, I verbally expressed to you, I would say, now attempting to place it in a general time frame, sometime in the latter part of March my dissatisfaction with the nature of hearings that were being conducted before our own committee, the subcommittee specifically, Inter-American Affairs Subcommittee, particularly on the origins of our policy toward the Allende government from about 1970 to the present, and the effective or the lack of effective ability that I had had to get the chairman of the subcommittee to have what I considered to be hearings into the origin of that policy.

I told you I think at the same time that in appearing before our committee, in general declining because of the oversight function, in his own words, being investigated with the Armed Services Committee, Mr. Colby indicated that he would prefer to be responsive to a relevant House committee.

Mr. NEDZI. Mr. Hébert.

Mr. HÉBERT. Mr. Harrington, would you identify the chairman of the subcommittee.

Mr. HARRINGTON. I am sorry.

Mr. HÉBERT. You said it was the chairman.

Mr. HARRINGTON. Dante Fascell. That has been part of the record in correspondence, chairman of the Inter-American Affairs Subcommittee of the House of Representatives, the full committee being the Foreign Affairs Committee.

And indicated to you my interest in at least pursuing what had been said in repeated fashion in the preceding fall by the Director of the

CIA and largely prompted by a variety of expectations on my part that the committee would engage in substantive hearings being dashed or at least not fulfilled up to that point.

I think at the time you asked if I would make a request to you summarizing that in some fashion, which I did, and I don't have that packet of correspondence, but I would say it is the first part of April of this last year, and the date could perhaps be made a part of the record if it is useful for the record.

I don't think until some time after the hearing was actually held that you and I had any further communication except to have you tell me that you had had the hearing and were in the process of attempting to get approval or permission from the chairman to have me get access to the material, and we had conversations of this kind, I would say, through the latter part of May and I think about at that time that the procurement bill came to the floor and a discussion was finally held, I think maybe involving Mr. Slatinshek, after talking with yourself, who had indicated that he had talked with the Director of the CIA and you had already, Mr. Chairman, talked with the chairman of the full committee, Mr. Hébert, and that it would be appropriate at that time for me to come to the committee and to obtain access to the material that had been the subject of my request in the Colby testimony.

I believe I did that the following Monday or Tuesday, the first week of June, and went back to the committee a second time, the only other time, a week later, and each time observing the procedures, which have been in a more orderly fashion than I can recount outlined by Mr. Slatinshek, as to how that material was to be handled and read it I think in the presence in general of one or more of the employees of the Armed Services Committee.

Frankly, and I can digress a minute so that I can put at least my philosophy in perspective, and I am sure you people have no trouble arriving at without my bothering to be fulsome in detail, I didn't expect much by way of substance to come from the session that you had and it was more by way of looking for avenues to pursue what I thought was a very serious subject, particularly in light of testimony given—I don't know whether under oath, Mr. Hébert, or not—by a variety of executive branch witnesses to other congressional committees on the question of our involvement in internal political affairs during the Allende period in Chile, and to say that I was startled by the substance would probably understate to a great degree.

I think Mr. Slatinshek was there the first time and we had some brief comment which would tend to characterize what I suggest to you this morning was my reaction.

Mr. SLATINSHEK. May I interject at this point?

I observed that this was the usual candor with which the committee received testimony from Mr. Colby. He was always forthright and complete in his testimony and I mentioned that this was the manner in which we had operated.

Mr. HARRINGTON. You have no disagreement with me on that score. I found it, at least to the degree that it was candid, direct, almost to a degree a monologue, reciting not only the events as far as our involvement on the part of various executive branch agencies in the Allende period, but also with almost a sense of inferred pride useful as an

insight into both the main witness, Mr. Colby, but also an insight into the method of operation that the CIA employed in this instance, and I can infer from my memory employed in the conduct of covert or clandestine type operations.

I found the information troublesome. I think almost the afternoon to the day of the second reading of the testimony an Assistant Secretary of State, Mr. Shlaudeman, and I am not helpful to the spelling, came before our subcommittee.

Congressman Fraser had arrived at, from independent sources, and I certainly have no reason to not believe him since I had no conversation with him prior to the time of that hearing, general information of a similar nature. And as I think the afternoon session of about June 12, would reflect, both Congressman Fraser and I asked some pointed but still reasonably guarded questions of the Assistant Secretary who, by the way, Mr. Chairman, I asked to be put under oath and then withdrew because of the obvious impact it had on both him, and I might say, the committee membership that was there that afternoon.

Mr. BOB WILSON. Was this in executive session?

Mr. HARRINGTON. No, it was not; open session. I think it was Tuesday afternoon in June.

At that point I had determined, so that you don't have any ambiguity about my state of mind, that that information, particularly as it contrasted with what was being stated by a variety of executive branch spokesmen on a regular basis, had to become known and had to become understood by both the Congress and hopefully the country, and I don't really want to mince or choose language which is in any way going to suggest that there was any ambiguity of my state of mind at that point in time.

I would prefer, and I hope that my rather brief service on the Armed Services Committee would even momentarily afford the charity of the observation being joined in, to have seen that accomplished by using legitimate methods to do so.

Consequently, I had conversations with Congressman Fawcett, briefly informing him of the specifics of what I had read.

Mr. NEDZI. What was his response?

Mr. HARRINGTON. An almost audible sigh and a philosophic shrug of a sense of almost not wanting to have been made part of the scope of knowledge and what I would interpret as—I do this subjectively—an expression of disinclination on his part to involve himself, at least as to the sources and the type of information that I provided him.

Mr. BRAY. Did you inform Mr. Fawcett of the manner and statement which you had made as to secrecy when you received that information?

Mr. HARRINGTON. I was going to continue, Mr. Bray, but I indicated to Mr. Fawcett, as I had to others, the nature of the testimony, to whom it had been given, and the conditions under which I had read it. I didn't get into the detail that Mr. Slatinshek had characterized in his recital of the rules this morning. I infer in general they are generally familiar with the procedures which would operate as to information which is classified, secret or whatever.

Mr. BRAY. Did you not specifically tell Mr. Fawcett the instructions that were given you and the statement which you signed?

Mr. HARRINGTON. If you are talking about that I told Mr. Fawcett

that I signed a cover sheet on the testimony and what my memory was of the language of it, no, I didn't, but I made it equally clear to him approximately when and where and under what conditions and the general tenor of the information and its categorization by the executive branch, so that I really don't think that there was anything that was an effort to gloss over the nature of the sources of my information.

Mr. BRAY. I believe you stated in the negative, that you did not tell him specifically that you signed, for instance—I will read it.

Mr. HARRINGTON. I will accept it as read. I know what I signed.

Mr. BRAY. I mean, did you tell Mr. Fascell what you signed before you got access to this information which you gave to him?

Mr. NEDZI. The gentleman said he didn't.

Mr. HARRINGTON. I specifically did not in the sense of saying that I signed a sheet that was a cover sheet to 48 pages of Director of CIA testimony that took place in April.

I went up to Dante Fascell, talking to him in the committee, and said, "I have seen the Colby testimony and this is what it says in general, and where I have seen it."

Mr. BRAY. I just wanted to clarify this. Here you signed on June 4, 1974 and June 12, 1974 this statement:

"I have read the rules of the Committee on Armed Services relative to access by Members of the House of Representatives to classified information in the committee files, and I agree to honor those rules."

You didn't specifically tell him that you had signed that to get the information which you used?

Mr. HARRINGTON. I will try to be responsive again.

No, I specifically didn't.

Mr. ARENDS. Did you by chance use the phrase that we so often use around this place, did you say to Dante Fascell, "This is a matter off the record."

Mr. HARRINGTON. No.

Mr. ARENDS. Did you use that phrase?

Mr. HARRINGTON. No.

Mr. ARENDS. You felt then at that moment you had complete freedom to tell anything you want to tell.

Mr. HARRINGTON. To another Member of the Congress? Sure. I assume that that is what he is here for, and I assume also that I told him, in his knowing better than I, Mr. Arends, exactly what the conditions are that the CIA testifies, that I didn't have to spell out to somebody who has eight or nine terms basically what I assume to be superior knowledge to mine of those procedures.

I don't want to verbally fence with you, Mr. Bray. I did not want to recite in any further detail.

Mr. BRAY. Thank you for answering the question.

Mr. HEBERT. In other words, I think your expression now was that you had this information, that you felt free to tell any Member of Congress that information?

Mr. HARRINGTON. Certainly.

Mr. HEBERT. That Member of Congress is free to tell it to anybody else if he wants to because he had not signed that agreement and had not been privileged to look at this testimony.

Mr. HARRINGTON. That wasn't the intent of mind, Mr. Chairman, so

I agree with you that, yes, I did tell him but I didn't really do it with an eye toward saying that I have been able to free him of the obligation to be imposed on him. That wasn't my intention.

Mr. HÉBERT. I am not saying you did it with that intent. All I am saying is what the result is. If you go around and tell 434 Members of Congress all of this without pledging themselves or committing themselves not to violate the rules of the committee, then they are free.

Mr. HARRINGTON. I can't help—besides what I have told you there because it wasn't—

Mr. HÉBERT. This is what we are interested in.

Mr. HARRINGTON. Other than my state of mind, not being with that in mind at the time, but only to take the person to whom I had been for months prior to that verbally lobbying to get substantive on the issue of our policy origins and acquaint him with it and tell him that I hoped in a sense that this would trigger renewed interest in the subject that frankly puzzled me.

I don't know that it is any use to you, but I never had, because I think in my dealing with the Helms tenure of the CIA, anything but the greatest of respect for the balance of the information they gave, particularly contrasted with the military, that I always felt very useful, and I had no conspiratorial theory about the CIA being brought in.

I think the chairman and I had some brief conversations about it. I frankly expected to find, first, nothing substantive or, second, confirmation of my suspicions about economic stabilization but not political stabilization, so I really had nothing in mind when I went to the committee itself.

Mr. HÉBERT. No; I am just pointing that out as to projection.

Mr. BOB WILSON. Mr. Chairman.

Mr. NEDZI. Mr. Wilson.

Mr. BOB WILSON. I can understand that you were surprised by what you found, but didn't you in any way feel bound by what you had signed?

Mr. HARRINGTON. In a strange way it is sort of a yes and a no, and this maybe is where we will ultimately go because it will be useful to me to learn from your own assessment, but if I had been convinced, Mr. Wilson, that either lives were going to be endangered—and this is going to be very subjective and I am not attempting to do any more than say I am setting myself up as the judge of this offering to you that way—or that the national security of this country would be affected or any of the other, at least legitimate in my opinion, bases for this inane system called classification that almost becomes an end in itself, I think that what I have demonstrated in my relationship with the committee and the often-heard lectures from the chairman during the 92d Congress that I was exposed to, that I would not have in any way done other than follow the rules.

I didn't feel, particularly looking at statements that I was most familiar with because I had followed the Chilean issue very closely for some time in the executive branch, feel any compunction at all at that point in time about those rules, so, superimposed on general willingness to say I prefer to go the way you suggest the rules would indicate, specifically in this situation, no, I did not.

Mr. BOB WILSON. That is all, Mr. Chairman.

Mr. HARRINGTON. Can I just finish?

Mr. NEDZI. Yes; please do.

Mr. HARRINGTON. I won't make it that long.

In addition to talking with Congressman Fraser, I talked with Congressman Hamilton, talked with Congressman—I said Fraser because I have also talked with him—in addition to Fascell talked with Congressman Fraser who, as I said earlier, arrived at a broad understanding from sources that he didn't disclose to me but had arrived at about simultaneously with the June 12 date, talked with Congressman Hamilton, talked far less briefly or in more abbreviated fashion with Congressman Rosenthal and Congressman Bingham only as a sort of pass-by kind of conversation.

That's not really a good way to characterize it, but as I was talking with Congressmen Rosenthal and Hamilton about this and about whether or not their subcommittees should concern themselves with it, Congressman Bingham came by and Congressman Rosenthal included him in the conversation to the degree of informing him or apprising him very briefly of what I was saying.

Mr. NEDZI. Did you include in these conversations the detail which you included in your letters?

Mr. HARRINGTON. Not to the degree. In the sense of giving them—

Mr. NEDZI. House Foreign Affairs and Senate Foreign Relations?

Mr. HARRINGTON. No; not in an organized or disciplined sense. I certainly in the conversations outlined some of the major facets of involvement and the purposes of it but did not get in the detail that was in the letters.

Mr. NEDZI. Is there any reason to suppose that any of these Members may have been the source of information that appeared in the newspapers?

Mr. HARRINGTON. As far as I am concerned none whatsoever. If anything at all, I would say the committee response is some indication of exactly the opposite, both then and now.

Mr. ARENDS. You didn't talk to any Republican?

Mr. HARRINGTON. Just thinking.

Chuck Whalen asked me in—let me not really qualify meeting as the category you had in mind—but Chuck Whalen asked me what the subject of our conversation was and I just in sort of a passing sense said, "Some testimony of Colby's that related to involvement," and he just—almost literally—just went. We didn't have any further as such at the time.

No, I didn't. I didn't talk. The other people that I have talked with in the Congress about it on occasions that would run from the then present reading to prior to September 8, which is I suppose the best date to use to say that it then becomes a different kind of knowledge, were Congressman Waldie of California very early, Congressman O'Neill, whom I make life harder for than I have today on the basis of his reaction to my frustrations which were increasing over the summer, and by way of defense of that remarked no encouragement whatsoever for the course other than acceptance of the prevailing facts of life here from Congressman O'Neill, and Congressman Pike, I would say just prior to our recess in August.

That's the best of my memory of the Members that I had any kind of conversation with either in great or narrow detail about the subject.

After that and after those conversations, the question in my mind really was what can I do to have this useful, not sensational, but get it out and get it out in a legitimate way. That is the reason why I talked about Don Fraser—he ran a joint subcommittee with us very often of his own on human rights—and asked whether or not he would be prepared to convene that subcommittee since he seemed exercised about the whole thing and let me come in and testify to it, which I was prepared to do, and again sort of philosophic sympathetic shrug, but nothing much beyond it.

So I was really looking at options which led me after some vacillation, and that I think had been almost the hallmark of my handling of this whole thing, decided that it would be useful to take and to outline in substantial detail not only the nature of the information that I took by memory from the reading of that record, but the efforts at getting the proper committees, in my opinion, on foreign policy to address themselves to it and thus the Morgan-Fulbright letters in mid-July of this year which materialized.

And I think about a week later or less I sent you copies or a copy—I am not sure which, Mr. Chairman—of one or both of those letters and had maybe even briefer conversation with you prior to or thereafter about what do I do now or what do we do now or what does this all mean, but no real substance just almost in passing.

Mr. NEDZI. My recollection of our conversation was that you said the ball was in your court.

Mr. HARRINGTON. Meaning yourself?

Mr. NEDZI. Yourself.

Mr. HARRINGTON. Oh. Maybe that's a very accurate insight. I had a letter back a week later from the chairman of the Senate Foreign Relations Committee which I would characterize politically as disappointing and no response at all from the chairman of the House Foreign Affairs Committee to this day.

Mr. ARENDS. Was that just a mere acknowledgment from the chairman of the Senate Foreign Relations Committee?

Mr. HARRINGTON. I think it is part of the packet that the counsel may have already had but I am prepared to give you all of that correspondence if it is useful for the record to make it a part, anything you like.

Mr. NEDZI. What do we have?

Mr. HARRINGTON. It has been made public but maybe in the course of your earlier public decision to have this hearing you had access to the material.

Mr. NEDZI. I haven't seen it.

Mr. ARENDS. I just want to ask again, was it mere acknowledgment, or detailed reply to what you wrote?

Mr. HARRINGTON. I would probably say it fell toward the acknowledgment category.

Mr. ARENDS. We have no copy of that.

Mr. HARRINGTON. But I would be more than happy to make that available and additional response which I received the day before yesterday from Chairman Fulbright.

Mr. NEDZI. Who made it public?

Mr. HARRINGTON. Who made——

Mr. NEDZI. The response, Senator Fulbright's response.

Mr. HARRINGTON. I did on the Thursday, that Thursday that you and I talked first about this hearing, that morning that I had a meeting with the press on the entire matter.

Just to finish off and you can take it from wherever you want to, about the latter part of July——

Mr. NEDZI. Excuse me.

You said that you had another letter from Senator Fulbright.

Mr. HARRINGTON. I wrote him again on the Wednesday we returned, September 11, urging in view of the information being disclosed, and I can again make this available so it is more accurate than my memory, just renewing my request for hearings, and did the same thing with Chairman Morgan.

Mr. NEDZI. Would you put that in the record.

Mr. HARRINGTON. Oh, sure. I will give you that whole batch of material. [Inserted at end of record, see p. 30.]

Chairman Fulbright replied to that second letter in much the same vein but adding the sentence that the Senate Foreign Relations Committee had met last week and was about to take up something dealing with the subject. It said nothing else substantively.

Chairman Morgan answered me by mail yesterday on my second letter, not alluding to the first, indicating that he didn't feel that it would be productive at all to engage the committee in my specific request for an inquiry and that they felt the question of oversight as far as broader degree of oversight was going to be dealt with in a promising fashion in the near future, but again not what I characterize as a substantive reply.

To go back to the period of mid-July, about the latter part of July, I had decided that the committee chairman route would get no place and the question was then options, and the ultimate option had always been to go to the floor of the House, which I was prepared to do, and do much the same thing as what was in that letter, just take the floor and spell it out.

In the interim I had thought about preparing a resolution of inquiry which could be premised on some of the specific information I had taken from the hearing and directed to whatever, State Department or NSC or CIA, and force the issue to the floor and force it to a committee at least for some action.

Then we had the events of the latter part of July which were taking the first 16 pages of each newspaper of the country. The impeachment proceeding began and it looked like it was not going to be something concluded early. They were talking about the hearings in the House not finishing until August 28 or 29 and I just did not feel that, for the purposes I really intended to try to do something further, it made any sense at all to attempt to compete with that kind of news item.

So I decided at that point in time that whatever I would do would have to take place in the interim between the impeachment proceeding ending in the House and a trial expected to begin in the Senate, and we left here I guess sometime the 22d or 23d of August and had done nothing more.

I would say about Tuesday or Wednesday after Labor Day I got a call at home and wasn't in because I was involved in the gubernatorial

campaign for a friend in Massachusetts, from Sy Hersh of the New York Times. I didn't return the call, largely because I was distracted, and finally on Friday of that week, which would be the 6th of September, I had a telephone conversation with Hersh which ran, if any of you are familiar with Hersh's style, which is from frantic to more frantic in pace, "I've got the Morgan letter. I am going to do a story. I want to talk with you. I'll be honest with you."

I said: "I assume you are starting out to be honest with me," and he laughed and we went back to the beginning and I said: "I am not going to comment on what you print until I see it in print." And I said beyond that, and this is where I suppose we should go next: "I have had a conversation, in addition to what I have told you about, with a very decent guy who I don't want to see pay the price for being a gentleman, whom I have had help from on the question of my knowledge of the issue since last fall and who I basically feel I should notify as far as the substance of your conversation with me since you are specific enough to convince me you do in fact have 'the Morgan letter,'" and I said, "It is Larry Stern of the Washington Post."

And at that point in time he backed off further from wanting to persist in questions. He asked if he could come to see me that weekend. I said: "Only on the condition that the story is in print because I don't intend to contribute to the initial story, if there is in fact an initial story," or knowing the reportorial effort of saying: "I have got something" and then trying to really get something by asking you to respond to give what you know.

So he came up that Sunday. I in the meantime on the same Friday called Larry Stern, who had been aware of the information that I told you I imparted to other Members of Congress and had not done anything with that information because I had really gone to him out of a sense of what you and I had had because of a conversation. What can I do to get this used and get it used in a fashion that will not detract in any way from having the substance and not the issue of where it came from.

Mr. NEDZI. When did Larry Stern indicate to you that he had this information?

Mr. HARRINGTON. I think I gave him some of the specific information probably the period—I don't know of any other sources he has, and I never really asked him, but to the degree I can address myself to the question I had a conversation with Stern which could be sometime probably the period—I don't know of any other sources he has, and I had been sent to the people involved.

Mr. NEDZI. And this information was imparted to Stern?

Mr. HARRINGTON. Verbally, not anything else. Stern did nothing with it because I sought him out as a person that I had been personally friendly with, asked his advice as to what might be done in some fashion that would be useful to get this information made available.

Mr. SLATINSHEK. I might appear redundant at that point, but we are dealing with classified information which was received by the committee in executive session and under the rules of the House which you presumably are aware of, being a Member of the House—

Mr. HARRINGTON. It is a presumption I wouldn't want to defend day to day.

Mr. SLATINSHEK. And the rules read:

No evidence or testimony taken in executive session may be released without the consent of the Committee.

It is obvious that at this point you are releasing information that the committee received in executive session and you are disclosing this not to a Member of Congress but to a person completely apart from the congressional process, and I just want to reiterate and reemphasize this and apparently it is consistent with the observation that you made earlier in your testimony at the very beginning of your testimony when you pointed out that after reading the testimony in the transcript you made a judgment at that point that this information must in some manner be imparted not only to the Congress but to the public.

Mr. HARRINGTON. I think that is a very adequate summary.

Mr. SLATINSHEK. Right.

Without regard to the rules of the House.

Mr. HARRINGTON. Is redundant.

Mr. SLATINSHEK. But without regard to the rules of the House.

Mr. HARRINGTON. If it embellishes your thesis I would certainly say without regard for the rules of the House.

Mr. SLATINSHEK. Precisely.

Mr. ARENDS. As a followup to that, did there at any time any tinge of conscience come across about your doing exactly what you did, contradicting the rules of the House? Did anything bother you about this at all, the fact that you signed this paper that you would or wouldn't do this and simply contrary to the rules of the House you very openly divulged all this information.

Did that have any effect on this? I am trying to find out what your thinking is on all this information.

Mr. HARRINGTON. I certainly would not want to put it to a vote here this morning. I thought I wrestled with that to a degree with Mr. Wilson. I would say, and I would not say it compatibly, the proposition twinges me as much as the chairman of the subcommittee, a very decent person that I respect, and a variety of other people perhaps somewhat more akin to me philosophically had that information, or had an awareness of the information and chose to do nothing in the light of what I think has been a consistent degree of misstatement on the part of the executive branch. So that question bothered me to a degree but not to the point of being deterred.

Mr. BOB WILSON. Benedict Arnold could use the same argument.

Mr. HARRINGTON. I don't know that I would like the categorization, but I certainly find that the headlong interest is in the periphery rather than the substance, sitting there with information that you know has been he subject of lies by the executive branch witnesses systematically. I have before me this morning—

Mr. BOB WILSON. They weren't lies to the oversight committee were they?

Mr. HARRINGTON. There is a very narrow distinction.

Mr. NEDZI. So that the record is clear, you are not suggesting that this subcommittee was given conflicting testimony from the executive branch, are you?

Mr. HARRINGTON. I am suggesting that this subcommittee, to the degree that I think there is the problem that is alluded to by Mr. Arends, ought to have some twinge of conscience in being complicit by their silence in what the executive branch is saying to the Congress,

before relevant congressional committees, and what the American public is led to believe.

Mr. NEDZI. Perhaps it was negligence or sloth or what have you, but let the Chair advise that to my knowledge this subcommittee was not privy to that testimony which was given to other committees. So we have had no reason to assume what was told to us was in conflict with other executive branch testimony.

Mr. HARRINGTON. I am not suggesting it was given in conflict either. I am suggesting from a variety of sources—Senatorial, congressional or House—there have been public statements repeatedly by people of the dimensions of former Director Helms of the CIA, former Ambassador Correy to Chile, the present Secretary of State and former head of NSC, now both, Henry Kissinger, all of which were substantially at variance with information you had on April 22d if not earlier.

Mr. NEDZI. But I repeat that I am not aware any member of this subcommittee was aware of those statements. The gentleman may argue that we should have been aware, but to my knowledge there was no cause for us to go into those particular statements in the time frame we are discussing.

Mr. HARRINGTON. I don't see any reason to feel I could really infer more than I said, or would I want to out of fairness to you, what your specific knowledge was.

Mr. HÉBERT. I think the one thing to be said is that the executive department doesn't make the rules of the House. The House makes its own rules, and we are creatures of the House and we live by the rules of the House and not the executive department. As Mr. Bray said, you did violate the rules of the House.

Mr. HARRINGTON. You have an interesting situation where the House, despite that ethic which is so admirably adhered to, at least in theory, with the executive branch is engaged in efforts that are done in secret for purposes that I think you people are much more familiar with than I am—you have been in the classification business longer than I have—using the classification system as an executive-inspired tool to prevent not only the people of the country but the Congress from having anything more than the kind of eunuch like usage of information which I again say is at variance with what other members of the executive branch are saying.

Mr. SLATINSIEK. If I may interrupt at this point, Mr. Chairman, I would point out in a very large sense the question of classifying could be set aside. We are talking about testimony received in executive session, and you have violated that House rule in respect to testimony received in executive session and could only be used under the provisions provided for by the committee.

Mr. NEDZI. I have a couple of additional questions, but I would like to have the gentleman complete his narrative as to where the information was disseminated.

Mr. HARRINGTON. There is not much more I can add. The events of September 8 are reasonably well known. I will add one other part of it that I think is relevant in the sum total of my knowledge of what happened.

In deciding what the options were that I had and deciding, as I alluded to, on the effort to prepare a resolution of inquiry, I asked for

and received the help of a fellow named Jerome Levinson who works for Frank Church, who had been last fall, because of involvement in the Church Subcommittee on Multinational Corporations, useful as far as providing an insight into the background of the Chilean setting for CIA activities, in drawing up specific questions for the proposed resolution of inquiry. And that basically was to have the option, in addition of going to the floor, of having that resolution of inquiry prepared to use if that appeared to be the appropriate route.

Mr. NEDZI. So this information was conveyed to Mr. Levinson also?

Mr. HARRINGTON. Right.

Mr. BRAY. The same information which you gave is the secret information you received. He was not a Member of Congress.

Mr. HARRINGTON. That is correct and neither was Mr. Stern.

Mr. BRAY. You gave the same information to Mr. Stern?

Mr. HARRINGTON. Verbally again, asking really from the point of view of the conversation to get advice and help as far as, in the one instance, how it could be responsibly used, and in the second to try to provide a background already gotten, I might say, by access to the executive branch or executive sessions on the Senate side, information from the CIA Director of Information for Latin America, Mr. Breo, and other information taken in March or April 1973.

Mr. BRAY. Did you tell Mr. Church's—what is his name?

Mr. HARRINGTON. Levinson.

Mr. BRAY. Did you tell Mr. Levinson the manner in which you had got what you had?

Mr. HARRINGTON. If you are going back to the question asked by Mr. Fascell, I did not. I told him about the basic circumstances of the testimony being given and the nature of it.

Mr. BOB WILSON. Did you give Mr. Levinson a copy of the letter to Dr. Morgan?

Mr. HARRINGTON. No; I did not. In fact he asked me for a copy of the letter the Tuesday or Wednesday you were back here in Washington, the 10th or 11th preceding the Wednesday, and I said until I make this known to the general public—and the same thing with Larry Stern—I talked with him on Friday, the 6th of September and he asked could he have a copy of the letter, and I said no, I am not about to tell, taking that one step further. That may appear to you to be a thin line.

Mr. BOB WILSON. Obviously somebody released the letter. I want to know if you think any of your staff released it?

Mr. HARRINGTON. No; I would say again—do I think any of my staff released it? There would be no reason to, because if I have anything to offer at all it is direction—I don't like indirection—and my intention was never—if you will believe a reaffirmation of it today—to go drop something by somebody's door and do what the chairman indicated, tell a member the knowledge but in his opinion he would not be bound by what I signed. If I am going to do this, I do it frontally and do it for the reasons and the attitude I ascribed to myself earlier with that in mind and not do it the other way. I never thought of it. If anything I was annoyed, with the vacillation I characterized this morning, not having it emerge as it did. It wasn't any thinly veiled effort to say take this and use it this way.

Mr. NEDZI. To whom on your staff was this information available?

Mr. HARRINGTON. Probably in general five or six people, all of whom would have been involved in the Foreign Affairs Committee area. That is probably too large a number.

Mr. NEDZI. What are their names for the record?

Mr. HARRINGTON. Rodney N. Smith, Lawrence Tell. Let me think about whether there was any—if you are talking of typists—

Mr. NEDZI. Anybody who would have had access to this information because of you.

Mr. HARRINGTON. You have a couple of people who would have typed it. I am not sure in what order. I can give you those people if you want.

Mr. NEDZI. Yes.

Mr. HARRINGTON. Let me add one other on the staff level. Steven Sholtz who came in mid-June, and Margaret Sharkey, the secretary, the typist, whatever information is imparted from that source, and a girl by the name of Sue Meyers who is no longer with me. I think she is working in Pennsylvania. I can get the address if you would like it. That would be my memory of the staff.

Mr. BRAY. Then you did not give a copy of this letter which you mailed to Morgan, the Chairman of the Foreign Affairs Committee—

Mr. HARRINGTON. Hand delivered to the chairman on both sides, sealed and marked to their attention only; and delivered directly to Dr. Morgan and Senator Fulbright.

Mr. BRAY. Did you ever give anyone a copy of that letter?

Mr. HARRINGTON. After September 8; yes. I think I told you I made it available on the Thursday of that week to the press people who had been interested in it and anyone else—I don't know who else was involved. Other offices of other Congressmen—the letter prior to that, no; I did not.

Mr. BRAY. You did on that date give a copy of the letter which you wrote to them?

Mr. HARRINGTON. Correct. They were just available. They were run off and made available, not selectively given.

Mr. NEDZI. I note the initials M/L.T. as the typist on the letter.

Mr. HARRINGTON. Larry Tell. L.T. The "M" may be Margaret or Meyers. I don't know the code. I could find out for you.

Mr. NEDZI. Is Larry Tell the typist?

Mr. HARRINGTON. Larry Tell would be the person who would have done the dictating of the letter in conversation with me and a draft for me.

Mr. NEDZI. I see. And "M" is the typist?

Mr. HARRINGTON. Either Margaret Sharkey or Sue Meyers. I don't know which way it goes.

Mr. ARENDS. Your interpretation is interesting, but I am trying to understand you now.

Mr. HARRINGTON. I am trying to understand you, Mr. Arends.

Mr. ARENDS. That is easy to do.

You say you signed this document divulging information knowing the House rules?

Mr. HARRINGTON. Presumptively that is correct.

Mr. ARENDS. You said it bothered you a little bit whether or not you were going to disclose it. Nevertheless you disclosed it.

Mr. HARRINGTON. I don't think I would want my statement characterized that way. I think you asked me somewhat differently, whether or not I had any momentary concern of any kind. I tried to characterize it; yes, to a degree. But along side with what I have already said, and in no sense being abrasive again either to the committee's knowledge or other knowledge imparted to members.

Mr. ARENDS. I want to be fair about the matter. You must have known at that time you were going through and experiencing an action which was a falsehood as far as you were concerned?

Mr. HARRINGTON. I never viewed it that way.

Mr. ARENDS. Yet you knew in your own mind you were doing something you agreed you would not do.

Mr. HARRINGTON. Not really with a preconceived intent. I am not going to try to quibble with you if you want to characterize it as something I engaged in, in talking to Mr. Nedzi or Mr. Slatinshek or Mr. Hébert—beforehand with that intent. It was not mine. It turned out but I didn't have the idea where and when. It was not something I had as a predetermined direction I was going to take, because it wasn't.

Mr. ARENDS. Then I will leave it that I still don't understand you.

Mr. BOB WILSON. My reference to Benedict Arnold was not unkind.

Mr. HARRINGTON. If I may finish with Mr. Arends, it probably won't be very useful. Tip O'Neill just shakes his head, just shakes his head and I say "That is right, I am Joe Harrington's son and so can't be all bad." I don't know whether he understands me either, but that may be a help in this perspective.

Mr. ARENDS. Then I am in good company.

Mr. BOB WILSON. As I said, my reference to Benedict Arnold was not unkind. The point is, he really thought he was doing what was best for his country in violating the rules of the country, and I think you did. But there is a difference of opinion. I don't think you did. I think you really damaged this country tremendously by violating a rule of the House. You don't think so, but I do. I am sure Benedict Arnold didn't think so either.

Mr. HARRINGTON. They are not remotely alike and the comparison I would quarrel up and down with. You people frankly—not you, but those who know or are presumed to know, and who choose to accept what I consider to be a systematic degree of deceit practiced by the executive branch. But we could debate that forever and not resolve it.

Mr. BOB WILSON. Are you in favor of an oversight committee for CIA?

Mr. HARRINGTON. You are talking now when you say am I in favor of this oversight committee?

Mr. BOB WILSON. No. You want a separate oversight committee for CIA?

Mr. HARRINGTON. Sure.

Mr. BOB WILSON. Why?

Mr. HARRINGTON. Two reasons: First of all, let me say that to make sure my views will be clear, I want the CIA out of the covert side, and I have never really been ambiguous about that, or my appreciation which I have publicly expressed for the value and the responsible

way in which they conduct intelligence gathering and evaluation, which I endorse, and I have told people this publicly, including Colby and others.

First of all I would like to get the CIA out of what I would call clandestine, or covert, or paramilitary operations, whatever you want. If we don't do that as an interim step I want something more—as I told the chairman in August—than the fiction of oversight. I am convinced until April of this year, in spite of having been designate—and you can tell me if I am wrong—as chairman of the CIA Oversight Committee, I am convinced that until September 12 of this year, John Stennis, who occupies the same role in the Senate as Chairman of the CIA Oversight Committee, did not have the kind of specific information that was imparted to Mr. Nedzi on April 22. I am not saying that in clear enough fashion.

I would say from what I could read in your reactions to that statement, despite the illusion given us regularly by CIA of being informed, until April 22 of this year, I infer, from the nature of the responses or reactions, that the degree of specificity attendant to your knowledge didn't exist before, and the same thing with Mr. Stennis until September 12 of this year.

I would be very happy to make an apology for the record or publicly for that inference being drawn. I don't really find it at this point warranted. Yes, I am interested in oversight but not the kind that exists right now.

Mr. BOB WILSON. And you want the public to know what CIA is doing?

Mr. HARRINGTON. Bill Colby does and I believe him. I think he gets into this and I think Mr. Slatinshek takes issue with it. I think Colby in some discussion with the chairman indicates, do you think we could get the American public to agree or get more acceptance if we broaden their knowledge. I think you take issue, that you didn't think that could be the case. I think there ought to be more, and not just a fiction of knowledge.

Mr. SLATINSHEK. You made the statement you wanted to see CIA completely out of the covert business.

Mr. HARRINGTON. Right.

Mr. SLATINSHEK. What you are talking about here is political or paramilitary action?

Mr. HARRINGTON. Whatever you want to call it. The nonintelligence gathering side.

Mr. SLATINSHEK. You are starting with the premise, or you are basing this on a premise that under no circumstances is covert activity—and let's set aside the merit of the action in Chile—under no circumstances would a covert action be justified in the national interest. Isn't that what you are saying?

Mr. HARRINGTON. Yes, essentially.

Mr. SLATINSHEK. In other words, you would deny—

Mr. HARRINGTON. I perhaps like my own language, but essentially that is what I am saying.

Mr. SLATINSHEK. You would deny to the President the option of using covert action in the national interest under any circumstances?

Mr. HARRINGTON. I would deny to the President of the United States

the ability to use as an instrument of policy the CIA or any related agency that had a similar capacity, with which I may not be fully aware this morning, the initiative of engaging under his direction as National Security Council head, activities that could be best described as—

Mr. SLATINSHEK. Covert?

Mr. HARRINGTON. In the lasting words of Mr. Colby as covert, clandestine, or others of that variety, and that is subject to the narrow distinction I have drawn already. That does not, I hope, mean to imply I am aiming at a broader target within the framework of CIA action.

Mr. SLATINSHEK. Whether it is CIA or any agency in Government you would be opposed to the Executive having any opportunity or device whereby he could engage in covert activity in a foreign country regardless of whether or not it is in the national interest?

Mr. HARRINGTON. Now we keep broadening the question.

Mr. SLATINSHEK. I am trying to summarize what you have said, and I want to make sure we understand what you said.

Mr. HARRINGTON. Let's just not quibble on the semantics. I don't want to get into an opinion on the feeling. I think you are trying to convey. If covert means the use of methods that we in this country would regard as illegal or violative of the law to engage in intelligence gathering, you have no problem from me in implicitly accepting that, like it or not, the Government can exercise it.

If you mean, on the other hand, a CIA type sitting in the hills of Thailand putting together a phony letter to stir up trouble of the kind made known, and you have a record in 48 pages of what we did in Chile to destabilize or fragmentize, that is the distinction I draw.

Mr. SLATINSHEK. Let me ask you a hypothetical question.

Mr. HARRINGTON. We finished on that note in August, but go ahead.

Mr. SLATINSHEK. Yes; we did.

Let's assume the Arab countries further escalate the price situation we have on energy now and it places the Western World on the brink of complete economic chaos and collapse. Let's assume further that all diplomatic efforts to resolve this impasse have failed. Then the only alternative options apparently available to the President are simply to acquiesce in the economic chaos or send in the Marines.

Mr. HARRINGTON. Frankly, if you get to the point of your hypothetical question letting me hanging on the edge of the cliff as far as the options, either/or, and we are at the point where our national survival in somewhat more subtle form as shown as being the historical threat that calls for war, let the President come to the Congress for approval and ask to go to war.

Mr. SLATINSHEK. You are saying if he does call it covert or any other word for it, secret action in the national interest, he would have to come to Congress to get approval?

Mr. HARRINGTON. Only as it applies to what you gave me as an example.

Mr. SLATINSHEK. This is ridiculous.

Mr. BOB WILSON. I want to commend you for bringing a new word into our vocabulary—destabilize. I have read the total testimony and never once was that word used. You invented it and it is beautiful.

Mr. HARRINGTON. That is to the real credit of Bill Colby.

Mr. SLATINSHEK. If I may interrupt at this point, Mr. Colby did not use the word "destabilize" in his testimony.

Mr. BOB WILSON. That is what I said.

Mr. SLATINSHEK. In fact he wrote a letter to the New York Times to this effect.

Mr. HARRINGTON. That is what I said.

Mr. SLATINSHEK. I am sorry I missed that.

Mr. NEDZI. Let the Chair return to the problem that really is vexing as far as the subcommittee is concerned, the procedures with respect to the handling of sensitive information.

Mr. HARRINGTON. I have absolutely no reason to challenge your motives in what has occurred. I similarly was interested in seeing that some of this might be made public. Do you recall reading in the transcript when I inquired of Mr. Colby whether this information could be made public or not?

Mr. HARRINGTON. Not enough to be able to respond right now with anything more than what I have.

Mr. NEDZI. The point I am making is while the thought occurred to me, I can't say the thought did occur to me to take it upon myself to challenge the classification of this information on the part of those charged with responsibility of making this kind of classification. Don't you feel uncomfortable when Colby testifies that if this information is disclosed, he expects that some individuals in the CIA will be affected adversely?

Mr. HARRINGTON. Let me ask you—you have the benefit of something I suppose is permanently removed from me to have access to. My memory of this, if I could say, is that Colby after 16 or 18 pages of specifically addressing himself to the question of Chile gets into more general discussion of the method of operation employed by the CIA. If you are reading from that section, I would agree Colby has made the observation at some point that the problem of disclosure could create the situation you have described. I didn't really want to have that seem to be inferred in the instance of going back to Mr. Wilson's question of motive and attitude earlier. In the instance here Colby testified to you that if this information were made known that the lives of individuals or other problems would ensue in Chile, I thought he was addressing himself to the more general question of how the agency dealt with problems of this kind on the broader scale when he made these observations here.

Mr. NEDZI. I asked him, what do you see as a problem?

Mr. HARRINGTON. What page is that?

Mr. NEDZI. Page 42.

Mr. HARRINGTON. I assumed it is in the general discussion.

Mr. NEDZI. He answered: "There are a number of individuals who've helped us who would be caught in the process, who were the intermediaries, or the recipients, who would be revealed as having received American money, or passed American money, at the behest of the CIA. I think some of them would go to jail maybe, maybe not, but some of them would be very sharply discredited. Because you can't really say that we are working in this area, without saying sort of obviously whom we were working with" and so forth.

Mr. HARRINGTON. Was the basis of the answer a question about information being made public?

Mr. NEDZI. The basis of it was to determine if, in his judgment, we could release the transcript and——

Mr. HARRINGTON. I get the feeling when you get to that point in the transcript Mr. Colby is engaging, because he dominates most of that proceeding with almost a monolog, in the description in general of the agency function in this role, who is brought in as far as the other executive branch agencies, how they in general function, and what the change of command is as far as approval. But you are engaging in a general as distinguished from a Chilean discussion focus.

Mr. NEDZI. That was not the intent of the question.

Mr. HARRINGTON. What did he say before that prompted your question? Probably page 41.

Mr. NEDZI. We do have independent inspections, the Inspector General, and things like that, and sometimes they do come up to sharpen the question whether this particular activity is worth it, or being run well, or whatever. It is the usual thing of running any kind of an organization. You have to have some independent appraisal of how well it is doing.

Apparently I had asked him about whether there was any review of these activities to determine whether or not they were successful or desirable. And following that it was certainly the intent of any question to determine whether all of the information in the transcript could be made public.

The point is, however, you say that didn't trouble you?

Mr. HARRINGTON. Not at all, because he didn't get into, as you well know, anything by way of specific references to names, to institutions, to parties, beyond generalized descriptions that one might have cognizance about the area and fill in the blanks. This was not something he testified to you on.

Mr. NEDZI. Aren't you troubled by taking it upon yourself to determine whether a rule should be followed or not? Isn't that really what Watergate was all about?

Mr. HARRINGTON. Mr. Nedzi, I think——

Mr. NEDZI. I certainly sympathize with your motives to a far greater degree than I did the principals in Watergate. But aren't we really talking about a similar problem—somebody taking it upon themselves to make these determinations?

Mr. HARRINGTON. I think Watergate is altogether about something else. This is about the Congress and deference or acquiescence with the executive branch.

Mr. NEDZI. Don't you believe we are genuinely concerned about national security involves in that?

Mr. HARRINGTON. In Watergate?

Mr. NEDZI. Yes.

Mr. HARRINGTON. It is so hard to find any remaining redeeming facets to the term. After the President reduced it in the tapes and other things to a shambles of meaning, I don't think I could really answer it.

Mr. NEDZI. My own feeling is there were some participants there who felt they were doing the right thing and weren't concerned about the law and the rights of others. Just because their own minds were fixed that this was the right thing to do for the good of the country, they did it, and that to me is an undesirable way of operating. I think we do have a Government of laws and of rules and you are really

treading on very thin ice when you choose on your own to violate laws and rules.

Let me put it another way: Let me ask you the question——

Mr. HARRINGTON. I hesitate because I am looking for a rejoinder. I think the Watergate runs more aptly toward a continuing coverup of the conduct on the part of the executive which is acquiesced in collectively by the Congress.

Mr. NEDZI. I am talking about the activities that the term "Watergate" encompasses. But that aside, do you have any suggestion as to what kind of rules could be promulgated in order to assure that an individual, because of whatever reason he might have, will not disclose sensitive classified information that if disclosed could be contrary to the public interest? Do you think our rules are unreasonable?

Mr. HARRINGTON. I think totally, and I think the classification system is a joke.

Mr. NEDZI. Apart from the classification system. That is a separate issue.

Mr. HARRINGTON. That is the root of it.

Mr. NEDZI. Are you saying there is no sensitive information that is in our transcripts?

Mr. HARRINGTON. In general or specific? The transcript before you?

Mr. NEDZI. I am speaking in general.

Mr. HARRINGTON. Sure.

Mr. NEDZI. What we are concerned about is having some extremely sensitive transcript available to a Member of Congress, given to him under the same rules and constraints that this transcript was given to you, only to have it disseminated to a member of the press.

Mr. HARRINGTON. If we talked about the broadest possible definition of sensitive information existing someplace that should not be disseminated, without question I would agree with you. I didn't want to have my answer attempt to be responsive to something that appeared to be directed to this particular transcript in front of you.

Mr. NEDZI. But each individual should be entitled to make that same determination then, shouldn't he?

Mr. HARRINGTON. That I suppose is something we could quarrel over forever, far more than this committee would say is the case if I could judge from the chairman.

Mr. NEDZI. Are you saying there is no way to promulgate a rule or we will just have to assume that risk?

Mr. HARRINGTON. We will always be in an area where we will never arrive at a point where there will not be fundamental disagreements of approach between people who are otherwise reasonable. I think we will never get to a point where you will satisfy all people on this whole question.

Mr. NEDZI. Have you any suggestions as to what we should do to our procedures to improve them, if they need improving?

Mr. HARRINGTON. I think I did this in my letter of mid-July which I addressed to the chairman of the Appropriations Committee, in which I deal with the subject of the House debate on Monday on the whole question of oversight functions, and with appreciation for the problems you have had as far as time.

Mr. NEDZI. But this problem is not going away.

Mr. HARRINGTON. I tried to induce some thoughts about that from your own quarters.

Mr. NEDZI. Regardless of how you handle the oversight function, whether you have a separate committee or not, the problem of this kind of information is not going to go away. Should it be handled in a manner that is similar to the way in which we are handling it or should the procedure be changed somehow?

Mr. HARRINGTON. I think there are any variety of methods that could be available that would go to satisfying some of the more legitimate concerns raised. For instance, one of the reasons we have talked about regularly here is much of what you have in that material has a deliberate and definite bearing on foreign policy decisions of this country. Yet in theory Bill Colby can claim to the Foreign Relations Committee and the Foreign Affairs Committee that he has no mandate on the part of Congress to be responsive.

Mr. NEDZI. Let me tell the gentleman that problem is being addressed very diligently, and we anticipate some kind of contribution toward solving this in the very near future.

That isn't the point I was talking about. The point that troubles me is the one which was brought to a focus by this particular instance. I am trying to solicit from you some comment as to what might be done to avoid having 435 members exercising their own judgment as to whether the rules should be followed or not.

Mr. HARRINGTON. I thought I had given you my usual curbstone opinion about that—far less secrecy at the executive branch level, far less acquiescence in it on the part of the Congress, which winds up picking up the pieces of the kind of secretly arrived at policy of the kind we find ourselves addressing here, and far more trust in general on the part of the Congress about itself. You can say I am example "A" of why that shouldn't exist, but that is your opinion.

Mr. BOB WILSON. Do you feel by your violating the rule you might have made it impossible for other members to see sensitive material, not this material but other sensitive material that might have great use to individuals? Do you think in any way that is jeopardized?

Mr. HARRINGTON. I think by violating your rule—and I say your rule perhaps pejoratively—or the rule, what I resulted in doing is forcing a lot of people, not on this committee who have their own self-interest at stake to a narrow degree and philosophically at odds with my view, but forcing a lot of benign members on my own committee with the intent of perpetuating the fiction of oversight to get into the field for the first time where they should have been a generation ago. I think that has been done to a degree. That wasn't the intention.

Mr. BOB WILSON. Does your committee have oversight of the CIA?

Mr. HARRINGTON. No, it does not.

Mr. BOB WILSON. What do you mean?

Mr. HARRINGTON. Those who have acceded in this. You asked have I precluded other Members of Congress from getting access to sensitive material from what I have done in violating the rules. I have said to the contrary, that out of the mouth of our own Chairman Morgan the Foreign Affairs Committee has to deal with what they have been in for a long time, the knowledge there has been little oversight, and if it has occurred, it has occurred informally. In looking at the statement of

Congressman Giaimo from Connecticut on the floor, gentlemen, and Senator Symington of a week or two ago in the Senate, those theoretically supposed to be on the committees of oversight haven't penetrated that balloon but may once full oversight exists.

I asked the chairman this morning—and you don't have to answer it—did he have information before April 22 that goes to the substance of what we are doing. He may have to a degree. I don't know whether he did or not.

Mr. BOB WILSON. This is a somewhat related question. Do you feel that President Kennedy was ill advised in using CIA with regard to the Bay of Pigs?

Mr. HARRINGTON. You bet I do.

Mr. BOB WILSON. With regard to our clandestine activities in Laos also?

Mr. HARRINGTON. To the disconcertion of people who happen to share my same party label I very often hypphenate my criticism of executive branch activity of the kind you have described more generally in foreign policy by alluding to both the Kennedy era and the Johnson era, along with the Republican facets in the Nixon era over the last dozen years. I think you can say one that the Secretary of State clumsily tried to get at in testimony addressed to Mr. Church, who tried to keep interrupting Fulbright's efforts to repress that line of inquiry, I find the Secretary straining a bit with an exaggerated kind of claim of credit that he and the President were engaging in 1969 and 1970 on direction and departure of American foreign policy, that we ought to have more charity with decisions made about Chile, with appreciation of foreign policy perceptions existing at that time. They were once claiming a fundamental departure in our policy affecting our relationship with the Communists—and this is what I find all the more ironic—at the time the secret trips were being planned to China, a rapprochement with Russia being heralded as a great achievement of the administration, and one I have publicly said I concur in, you get a systematic effort to gut the Marxist government that not anyone yet in the most revisionist sentiment have suggested came to power did not come to power by a process we endorse for the rest of the world.

Mr. BOB WILSON. You determined in your own mind we gutted it. Certainly the testimony doesn't indicate to me that the activities resulted in gutting the Allende government. In fact it was very ineffectual with the expenditure of \$11 million in my opinion. If there is any inference in the testimony we have had that resulted in the military coup, that our actions resulted in the military coup, that is false, and yet the statements that were made on the floor yesterday indicated that we instigated the coup by spending \$11 million.

Mr. HARRINGTON. I never would.

Mr. BOB WILSON. Let me ask this rhetorically: How would you like to have \$11 million to run for Governor of California with twice the number of people? I use the example and analogy of a setting of 9 million people in a less sophisticated political milieu and apply it to Chile against American dollars.

Mr. HARRINGTON. I wouldn't run for Governor of California if you gave me \$11 million.

Mr. NEDZI. We have just a couple of more questions to complete the record. Let me ask you this: How do you think the leak occurred?

Mr. HARRINGTON. I really don't know. One of the things I said to Seymour Hersh when he called, can you tell me where you got the one thing? And an amusing thing, and it is maybe not entirely accurate as it is secondhand—I heard it and had to some extent verified it—the Fulbright office was frantically looking for copies of my letter which was supposed to exist. Senator Case's office called over and asked on Monday or Tuesday for the letter. I was told they were scrambling around for a couple of days looking for the material I supposed got to Fulbright back in July.

Mr. NEDZI. Was that the original letter a copy of Morgan's?

Mr. HARRINGTON. Both had the original letter. I think I alluded to the fact the chairman of the other committee—if I had to guess, and this is only a guess, and I said this to Martin Agronsky when he asked me about it. I would basically see the letter to Fulbright or the Senate side being the basis for what happened. I really don't know and would be glad, as I told you, if I found out. I would be curious myself. But I did not do it.

Mr. BOB WILSON. You say you would assume it would fall, but it may not look as if you pushed it?

Mr. HARRINGTON. I think really that has been the thrust of it all this morning. I am more annoyed by what I consider to be vacillation on my part in not having the courage to face it head on. I would not engage in that sort of thing. I would be more comfortable in taking it to the floor of the House and letting you guys do what you want. I never had any intention of going that way.

Mr. SLATINSHEK. I understood you to say you wrote a separate letter to Mr. Fulbright. Is that correct?

Mr. HARRINGTON. I wrote identical letters to Fulbright and Morgan originally. Going to Mr. Nedzi's question, original copies.

Mr. SLATINSHEK. Were they addressed specifically to Mr. Morgan and in the other instance to Senator Fulbright?

Mr. HARRINGTON. Yes.

Mr. SLATINSHEK. Could we have a copy for the record of both of those letters?

Mr. HARRINGTON. Sure.

Mr. SLATINSHEK. So we can insert them in the record.

Mr. HARRINGTON. You can have it all.

Mr. SLATINSHEK. What I am troubled by, you had indicated you had personally handed them the letters.

Mr. HARRINGTON. I had caused them to be personally handed. I thought I made that clear. Somebody asked did you mail them and I said no, they were personally delivered.

Mr. BOB WILSON. I took you to mean you handed the letters to them.

Mr. HARRINGTON. No.

Mr. SLATINSHEK. In other words, you had a messenger hand deliver this and they did hand deliver it to Chairman Morgan and to Chairman Fulbright?

Mr. HARRINGTON. That was the intent. I can go back, if you would like, and see actually from the committees to whom the delivery was made, if not to the chairman. I frankly never inquired.

Mr. SLATINSHEK. I think it would be important for the record we know this.

Mr. HARRINGTON. You might check.

Mr. SLATINSHEK. I would like you to provide that to us for the record.

Mr. HARRINGTON. Any way you want to do it.

Mr. SLATINSHEK. That is particularly important since the Seymour Hersh article repeatedly referred to Thomas Morgan's letter, yet Mr. Morgan I understand did not release the letter in any way. This is my informal understanding.

Mr. HARRINGTON. I am quite sure you have a more informal understanding of the situation than I do.

Mr. SLATINSHEK. I am puzzled by the fact the Seymour Hersh leak uses the Morgan letter.

Mr. HARRINGTON. So am I. That was my theory to Mr. Nedzi in response to his question. I thought frankly the Morgan title was only used in effect to deflect attention from the Senate.

Mr. NEDZI. Mr. Morgan was referred to in the Senate letter.

Mr. HARRINGTON. The inference is clear I believe, in my writing to both chairmen one could be substituted one for the other.

Mr. NEDZI. Have you supplied for the record now to the best of your recollection all of the individuals to whom you imparted this information either by letter or by oral conversation?

Mr. HARRINGTON. That is correct.

Mr. NEDZI. Actually I don't see an allusion to the Fulbright letter in the Morgan letter.

Mr. HARRINGTON. I will be glad to refresh my recollection. I assumed it was or one could infer. I haven't read that in a while so I don't know.

Mr. NEDZI. To pursue Frank's line of questions, one would have to assume that the Fulbright letter was available and some additional information to the effect that there was also a Morgan letter.

Mr. HARRINGTON. Correct.

Mr. NEDZI. It was not clear from the letter.

Mr. HARRINGTON. I don't know. I don't have the letter in front of me. I assume I made a reference for the chairman of the committee, so you would infer it was being sent both ways. Again, that is my guess and not anything beyond that at this point. Those are the letters, and I can find out the method of delivery. Mr. Slatinshek's intention is very clear.

Mr. SLATINSHEK. The question of the delivery, the individual who delivered, whether personally delivered, and give us copies of the letters. This would be helpful for the record.

Mr. HARRINGTON. OK.

Mr. NEDZI. The subcommittee will stand in recess until further call of the Chair.

[Whereupon, at 12:20 p.m. the subcommittee recessed until call of the Chair.]

[The following information was received for the record:]

OCTOBER 7, 1974.

HON. MICHAEL HARRINGTON,
House of Representatives,
Washington, D.C.

DEAR MR. HARRINGTON: As you will recall, on Wednesday, September 25, 1974, you appeared as a witness before the Armed Services Special Subcommittee on Intelligence.

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The Subcommittee is now endeavoring to complete the record in respect to your testimony. However, certain materials that you had volunteered to provide for the record have not as yet been received by the Subcommittee.

Specifically, I have reference to your offer to provide for the record:

- (a) Your correspondence with Senator Fulbright on the Chilean matter; and
- (b) Copies of the original letters sent to Chairman Morgan and Chairman Fulbright; the manner of their delivery, the individuals who delivered the individual letters, as well as the names of the individuals who actually physically received the letters.

I assume that your failure to provide this information for the record is due to your exceedingly busy schedule or simple inadvertence. In any event, it would be helpful to the Subcommittee to have this information made available so as to permit it to complete its record of your testimony.

Sincerely,

FRANK M. SLATINSHEK, *Chief Counsel.*

OCTOBER 8, 1974.

MR. FRANK M. SLATINSHEK,
Chief Counsel, Committee on Armed Services, U.S. House of Representatives,
Washington, D.C.

DEAR MR. SLATINSHEK: Thank you for your letter concerning the supplementary materials mentioned in my September 25th testimony. My apologies for the delay in responding.

Enclosed are copies of my correspondence with Senator Fulbright, as well as copies of the original letters to Chairmen Morgan and Fulbright which you requested. It is my understanding that Lawrence Tell, who worked for me this summer, hand delivered the July 18th letters to the personal secretaries of the Chairmen and that the secretaries were admonished that the letters were personal, confidential and for the eyes of the respective Chairmen only.

If I can be of any further assistance, please do not hesitate to contact me.

Yours sincerely,

MICHAEL J. HARRINGTON.

JULY 18, 1974.

HON. THOMAS MOROAN,
Chairman, House Foreign Affairs Committee, 2183 Rayburn House Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: As you know, for sometime I have been actively interested in the development of United States foreign policy toward Chile, and particularly since the overthrow of the Allende government on September 11, 1973, and my visit to that country shortly thereafter. It is my purpose in writing to discuss some of the fruits of my endeavors in that direction, which I feel pose serious questions about the manner in which our current relations with Chile evolved, how our policies there were implemented, and how Congress has exercised its oversight function. I request that you bear with me on the length of this letter, since I feel that the importance of its subject matter requires a detailed and comprehensive presentation of the evolution of my present concern.

No doubt you are familiar with numerous reports, dating from the time of Salvador Allende's election as President in 1970, alleging that the United States government played an active role in trying to influence Chilean politics. Immediately after the military coup last October, further reports appeared which indicated that the United States was involved, either directly or indirectly. At that time, I made a very brief trip to Chile which enabled me to gain a sense of the prevailing attitude there and helped add some substance to my earlier impression that the United States had engaged in political and economic destabilization efforts that eventually led to President Allende's downfall.

Since that time, I have repeatedly tried to focus attention in Congress on the origins of American policy toward the Allende government to determine its possible influence in the eventual course of events in Chile. In particular, I was concerned with the activities of the Treasury Department and the Central Intelligence Agency, the latter of which is the subject of quite limited Congressional review that is perfunctory and comes after the fact. As you can readily see from the exchange of correspondence which is attached to this letter, my efforts have not been productive of any substantial inquiries into our policies:

toward the Allende government. Instead, the few hearings that have been held focused largely on the internal situation in Chile and allegations of denials of Civil and judicial rights. The following list of hearings and witnesses clearly documents that fact:

Sept. 20, 1973 Subcommittee on Inter-American Affairs: Assistant Secretary of State Jack Kubisch

Sept. 25, 1973 Subcommittee on Inter-American Affairs: Assistant Secretary of State Jack Kubisch

October 11, 1973 Subcommittee on Inter-American Affairs: Central Intelligence Agency witness

October 31, 1973 Subcommittee on Inter-American Affairs: Defense Intelligence Agency analysts

December 1, 1973 Subcommittees on Inter-American Affairs and International Organizations and Movements: HUMAN RIGHTS IN CHILE—Dr. Frank Newman

May 7, 1974 Subcommittee on IAA and IOM: HUMAN RIGHTS IN CHILE—Charles Porter, former Member of Congress; Ira Lowe, attorney

May 23, 1974 Subcommittees on IAA and IOM: HUMAN RIGHTS IN CHILE—Dr. Covey Oliver, former United States Ambassador

June 11, 1974 Subcommittees on IAA and IOM: HUMAN RIGHTS IN CHILE—former Attorney General Ramsey Clark; Judge William Booth

June 12, 1974 Subcommittees on IAA and IOM: HUMAN RIGHTS IN CHILE—Deputy Assistant Secretary of State Harry Shlaudeman

June 18, 1974 Subcommittees on IAA and IOM: HUMAN RIGHTS IN CHILE—Professors Richard Fagan, John Plauack, and Riordan Roett

Following the September 25, 1973 hearing, Chairman Fascell issued a statement which read: "... the Subcommittee will hold additional hearings on Chile in the near future. We intend to conduct a full scale investigation of United States policy toward Chile." The committed language of that statement has not been pursued, despite a series of conversations between my office and the Subcommittee both at the staff level and between Chairman Fascell and myself. Finally, a request made in writing by me on March 7, 1974 to Chairman Fascell that he hold hearings on U.S. activities in Chile resulted in an inclusive exchange of letters over three months with the end result that the Subcommittee has promised two days of hearings, possibly sometime this summer, with non-government witnesses.

The one possible opportunity that was afforded to probe United States policies toward Chile occurred during the Subcommittee executive session testimony in October, 1973 of CIA director William Colby, who unfortunately refused to respond fully to questions of CIA activities in Chile, citing the jurisdiction of the Armed Services Committee. With little expectation that tangible results would follow because of its past deference to the CIA in such matters, I turned to the Special Subcommittee on Intelligence of the House Armed Services Committee. In my letter of April 2, 1974 to Chairman Nedzi, a copy of which is also attached, I recounted the reluctance of CIA Director William Colby to fully testify before the Foreign Affairs Committee and requested that Chairman Nedzi's Subcommittee hold hearings to question Mr. Colby directly as to covert CIA operations in Chile.

Mr. Colby testified on April 22, 1974 and after some delay, largely due to Chairman Nedzi's desire to obtain clearance from Chairman Hebert, I was notified on or about June 1, 1974 that I would be given access to the transcript. I read the hearing transcript once on June 5 and again on June 12, and the information contained in the Colby testimony convinced me that it is of critical importance for the Congress and the American people to learn the full truth of American activities in Chile. I wish to share this information with you, in the hope that you will feel the same sense of conviction that I experienced upon learning the full details of significant U.S. activities in the affairs of another country without any prior consultation of even the committee charged with overseeing such operations. In fact, actual formal notification of that committee came seemingly as an afterthought, and only after my request was made, many months after the operations had been conducted.

While my memory must serve here as the only source for the substance of the testimony, I submit the following summary of its contents as an indication of what transpired in Chile.

The testimony was given on April 22, 1974 by Mr. Colby, who was accompanied by a Mr. Phillips, who was apparently the Latin American specialist of the CIA.

Also in attendance were Chairman Nedzi and Frank Slatinshek, Chief Counsel of the House Armed Services Committee. Approximately one-third of the 48 pages of testimony is devoted to exposition by Mr. Colby of a continuous Central Intelligence Agency involvement in the internal politics of Chile from 1962 through 1973. Most of the remainder of the testimony provides a description of the methods employed by the CIA in conducting such operations, focusing on the details of how activities in Chile were accomplished.

Over the 1962 to 1973 period, the Forty Committee (an interdepartmental body that reviews and authorizes all covert CIA activities and is chaired by the President's Advisor on National Security Affairs) authorized the expenditure of approximately \$11 million to help prevent the election of Allende and, in Mr. Colby's words, "destabilize" the Allende government so as to precipitate its downfall. The agency activities in Chile were viewed as a prototype, or laboratory experiment, to test the techniques of heavy financial investment in efforts to discredit and bring down a government.

Funding was provided to individuals, political parties, and media outlets in Chile, through channels in other countries in both Latin America and Europe. Mr. Colby's description of these operations was direct, though not to the point of identifying actual contacts and conduits.

A total of \$3 million was sent in 1964 to the Christian Democratic Party in Chile that was opposing Allende in the national elections. Also in 1964, unidentified American corporations suggested that the CIA serve as a conduit for corporate funds that would finance anti-Allende activities, but that idea was rejected as unworkable. Approximately \$500,000 was authorized in 1969 to fund individuals who could be nurtured to keep the anti-Allende forces active and intact.

During the 1970 election, in which Allende eventually was elected President, \$500,000 was given to opposition party personnel. An expenditure of \$350,000 was authorized to bribe the Chilean Congress, which at that time was faced with deciding a run-off election between Allende and the opposition candidate. The bribe would have been part of a scheme to overturn the results of the election in which Allende had gained a plurality, but that plan, although originally approved by the Forty Committee, was later evaluated as unworkable.

The testimony indicates that the Agency role in 1970 was viewed as that of the "spoiler," involving general attempts to politically destabilize the country and discredit Allende to improve the likelihood that an opposition candidate would win.

Following the election of Allende, \$5 million was authorized by the Forty Committee for more destabilization efforts during the period from 1971 to 1973. An additional \$1.5 million was spent for the 1973 municipal elections. Some of these funds were used to support an unnamed but influential anti-Allende newspaper.

Although a specific request in the summer of 1973 for \$50,000 to assist the trucker's strike was turned down, the Forty Committee did authorize in August, 1973 an expenditure of \$1 million for further political destabilization activities. This final authorization came without any apparent deterrent being posed by the recently completed hearings into ITT involvement in Chile and the Senate Watergate Committee's disclosure of CIA activities related to Watergate.

The full plan authorized in August was called off when the military coup occurred less than one month later. In the aftermath of the coup, however, funds that had been committed were spent. These included \$25,000 to one individual to purchase a radio station and \$9,000 to finance a trip to other Latin American capitals to reassure them about the new military leaders.

Since learning this information, I have attempted once again to induce some Members to pursue the facts of our involvement in the Chilean situation to determine how those policies evolved and how they can be justified as being in the national interest. I have had a reasonably extended conversation with Congressman Fraser, and briefer ones with Congressmen Farnsworth and Hamilton, in which I described what I learned from the Colby testimony. While they were indeed distressed at the details of CIA operations, nothing was forthcoming as a result of those conversations that leads me to believe that there would be further investigations or hearings into the broader policy questions that such activities pose.

I turn to you as a last resort, having despaired of the likelihood of anything productive occurring as a result of the avenues I have already pursued. It is indicative of my frustrations to note that in the five meetings this year of the Subcommittee on Inter-American Affairs, which focused on human rights in

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Chile, only one government witness with knowledge of U.S. activities in Chile appeared. At that hearing, Congressman Fraser and I questioned Deputy Assistant Secretary of State Harry Shlaudeman on possible CIA involvement in Chile while he was stationed there as Deputy Chief of Mission from 1969 through mid-1973. His answers, a transcript of which is attached, indicated to me some knowledge on his part of CIA activities that he was unwilling to discuss before a duly-constituted Committee of the House. The inherent limitations facing Members of Congress in uncovering the facts of covert activities such as those in Chile requires, I believe, a commitment by those in a position to act beyond the existing, illusory oversight machinery.

At his confirmation hearings on July 2, 1973, Director Colby said:

"We are not going to run the kind of intelligence service that other countries run. We are going to run one in the American society and the American constitutional structure, and I can see that there may be a requirement to expose to the American people a great deal more than might be convenient from the narrow intelligence point of view."

I feel it is time to hold Mr. Colby to his commitment, as the Congress and the American people have a right to learn what was done in our name in Chile. Much as I would prefer to see this accomplished within the channels of the Congressional process, its importance convinces me that our very system of government requires that knowledge of American activities in Chile not remain solely with a handful of officials and Members of Congress. Therefore, I urge you to promptly turn this matter to the attention of the Foreign Affairs Committee for a complete, public investigation of United States relations with Chile. I trust that you will agree that the importance of this matter and its implications for future foreign policies of the United States demands no less.

Yours sincerely,

MICHAEL J. HARRINGTON.

SEPTEMBER 11, 1974.

HON. THOMAS MORGAN,
Chairman, House Foreign Affairs Committee, 2133 Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing to reaffirm my request to you of July 18, 1974, that you initiate open hearings in connection with United States policy with respect to Chile during the Allende period.

As you know, Mr. William Colby, Director of the CIA, in recent newspaper reports, is reported as having stated that the CIA is an instrument of policy, that it does not make policy, and that in connection with the Agency's clandestine activities in Chile during the Allende period, the Agency was implementing the foreign policy of the United States. Hence, I believe that the issue rests squarely within the jurisdiction of the House Foreign Affairs Committee: who made the policy which led the Central Intelligence Agency to undertake the extensive clandestine activities designed to subvert the Allende government?

In my opinion, an accounting to the American people and the Congress is in order and we should demand that accounting from Secretary of State Kissinger who, according to Mr. Colby, was the author of the policy toward Chile.

It is no longer acceptable for the Congress to acquiesce in State Department officials' coming before Congressional committees and making statements which, if not outright lies, are at least evasions of the truth. I urge that your committee, before which State Department officials have testified on this matter, reopen its inquiry in light of what we now know, and determine whether or not transcripts of their previous testimony should be transmitted to the Department of Justice for perjury.

Yours sincerely,

MICHAEL J. HARRINGTON.

JULY 18, 1974.

HON. J. WILLIAM FULBRIGHT,
Chairman, Senate Foreign Relations Committee, 1215 Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: As you may know, for sometime I have been actively interested in the development of United States foreign policy toward Chile, and particularly since the overthrow of the Allende government on September 11,

1973 and my visit to that country shortly thereafter. It is my purpose in writing to discuss some of the fruits of my endeavors in that direction, which I feel pose serious questions about the manner in which our current relations with Chile evolved, how our policies there were implemented, and how Congress has exercised its oversight function. I request that you bear with me on the length of this letter, since I feel that the importance of its subject matter requires a detailed and comprehensive presentation of the evolution of my present concern.

No doubt you are familiar with numerous reports, dating from the time of Salvador Allende's election as President in 1970, alleging that the United States government played an active role in trying to influence Chilean politics. Immediately after the military coup last October, further reports appeared which indicated that the United States was involved, either directly or indirectly. At that time, I made a very brief trip to Chile which enabled me to gain a sense of the prevailing attitude there and helped add some substance to my earlier impression that the United States had engaged in political and economic destabilization efforts that eventually led to President Allende's downfall.

Since that time, I have repeatedly tried to focus attention in Congress on the origins of American policy toward the Allende government to determine its possible influence in the eventual course of events in Chile. In particular, I was concerned with the activities of the Treasury Department and the Central Intelligence Agency, the latter of which is the subject of quite limited Congressional review that is perfunctory and comes after the fact. As you can readily see from the exchange of correspondence which is attached to this letter, my efforts have not been productive of any substantial inquiries into our policies toward the Allende government. Instead, the few hearings that have been held focused largely on the internal situation in Chile and allegations of denials of civil and judicial rights. The following list of hearings and witnesses clearly documents that fact:

Sept. 20, 1973 Subcommittee on Inter-American Affairs: Assistant Secretary of State Jack Kubisch

Sept. 25, 1973 Subcommittee on Inter-American Affairs: Assistant Secretary of State Jack Kubisch

October 11, 1973 Subcommittee on Inter-American Affairs: Central Intelligence Agency witness

October 31, 1973 Subcommittee on Inter-American Affairs: Defense Intelligence Agency analysts

December 7, 1973 Subcommittees on Inter-American Affairs and International Organizations and Movements: HUMAN RIGHTS IN CHILE--Dr. Frank Newman

May 7, 1974 Subcommittees on IAA and IOM: HUMAN RIGHTS IN CHILE--Charles Porter, former Member of Congress, Ira Lowe, attorney

May 23, 1974 Subcommittees on IAA and IOM: HUMAN RIGHTS IN CHILE--Dr. Covey Oliver, former United States Ambassador

June 11, 1974 Subcommittees on IAA and IOM: HUMAN RIGHTS IN CHILE--former Attorney General Ramsey Clark; Judge William Booth

June 12, 1974 Subcommittees on IAA and IOM: HUMAN RIGHTS IN CHILE--Deputy Assistant Secretary of State Harry Shlaudeman

June 18, 1974 Subcommittees on IAA and IOM: HUMAN RIGHTS IN CHILE--Professors Richard Fagan, John Planck, and Riordan Roett

Following the September 25, 1973 hearing, Chairman Fasel issued a statement which read: "... the Subcommittee will hold additional hearings on Chile in the near future. We intend to conduct a full scale investigation of United States policy toward Chile." The committed language of that statement has not been pursued, despite a series of conversations between my office and the Subcommittee both at the staff level and between Chairman Fasel and myself. Finally, a request made in writing by me on March 7, 1974 to Chairman Fasel that he hold hearings on U.S. activities in Chile resulted in an inconclusive exchange of letters over three months, with the end result that the Subcommittee has promised two days of hearings, possibly sometime this summer, with non-government witnesses.

The one possible opportunity that was afforded to probe United States policies toward Chile occurred during the Subcommittee executive session testimony in October, 1973 of CIA director William Colby, who unfortunately refused to respond fully to questions of CIA activities in Chile, citing the jurisdiction of the Armed Services Committee. With little expectation that tangible results

would follow because of its past deference to the CIA in such matters, I turned to the Special Subcommittee on Intelligence of the House Armed Services Committee. In my letter of April 2, 1974 to Chairman Nedzi, a copy of which is also attached, I recounted the reluctance of CIA Director William Colby to fully testify before the Foreign Affairs Committee and requested that Chairman Nedzi's Subcommittee hold hearings to questions Mr. Colby directly as to covert CIA operations in Chile.

Mr. Colby testified on April 22, 1974 and after some delay, largely due to Chairman Nedzi's desire to obtain clearance from Chairman Helbert, I was notified on or about June 1, 1974 that I would be given access to the transcript. I read the hearing transcript once on June 5 and again on June 12, and the information contained in the Colby testimony convinced me that it is of critical importance for the Congress and the American people to learn the full truth of American activities in Chile. I wish to share this information with you, in the hope that you will feel the same sense of conviction that I experienced upon learning the full details of significant U.S. activities in the affairs of another country without any prior consultation of even the committee charged with overseeing such operations. In fact, actual formal notification of that committee came seemingly as an afterthought, and only after my request was made, many months after the operations had been conducted.

While my memory must serve here as the only source for the substance of the testimony, I submit the following summary of its contents as an indication of what transpired in Chile.

The testimony was given on April 22, 1974 by Mr. Colby, who was accompanied by a Mr. Phillips, who was apparently the Latin American specialist of the CIA. Also in attendance were Chairman Nedzi and Frank Slatinshek, Chief Counsel of the House Armed Services Committee. Approximately one third of the 48 pages of testimony is devoted to exposition by Mr. Colby of a continuous Central Intelligence Agency involvement in the internal politics of Chile from 1962 through 1973. Most of the remainder of the testimony provides a description of the methods employed by the CIA in conducting such operations, focusing on the details of how activities in Chile were accomplished.

Over the 1962 to 1973 period, the Forty Committee (an interdepartmental body that reviews and authorizes all covert CIA activities and is chaired by the President's Advisor on National Security Affairs) authorized the expenditure of approximately \$11 million to help prevent the election of Allende and, in Mr. Colby's words, "destabilize" the Allende government so as to precipitate its downfall. The agency activities in Chile were viewed as a prototype, or laboratory experiment, to test the techniques of heavy financial investment in efforts to discredit and bring down a government.

Funding was provided to individuals, political parties, and media outlets in Chile, through channels in other countries in both Latin America and Europe. Mr. Colby's description of these operations was direct, though not to the point of identifying actual contacts and conduits.

A total of \$3 million was sent in 1964 to the Christian Democratic Party in Chile that was opposing Allende in the national elections. Also in 1964, unidentified American corporations suggested that the CIA serve as a conduit for corporate funds that would finance anti-Allende activities, but that idea was rejected as unworkable. Approximately \$500,000 was authorized in 1969 to fund individuals who could be nurtured to keep the anti-Allende forces active and intact.

During the 1970 election, in which Allende eventually was elected President, \$500,000 was given to opposition party personnel. An expenditure of \$350,000 was authorized to bribe the Chilean Congress, which at that time was faced with deciding a run-off election between Allende and the opposition candidate. The bribe would have been part of a scheme to overturn the results of the election in which Allende had gained a plurality, but that plan, although originally approved by the Forty Committee, was later evaluated as unworkable.

The testimony indicates that the Agency role in 1970 was viewed as that of the "spoiler," involving general attempts to politically destabilize the country and discredit Allende to improve the likelihood that an opposition candidate would win.

Following the election of Allende, \$5 million was authorized by the Forty Committee for more destabilization efforts during the period from 1971 to 1973.

An additional \$1.5 million was spent for the 1973 municipal elections. Some of these funds were used to support an unnamed but influential anti-Allende newspaper.

Although a specific request in the summer of 1973 for \$50,000 to assist the trucker's strike was turned down, the Forty Committee did authorize in August, 1973 an expenditure of \$1 million for further political destabilization activities. This final authorization came without any apparent deterrent being posed by the recently completed hearings into ITT involvement in Chile and the Senate Watergate Committee's disclosure of CIA activities related to Watergate.

The full plan authorized in August was called off when the military coup occurred less than one month later. In the aftermath of the coup, however, funds that had been committed were spent. These included \$25,000 to one individual to purchase a radio station and \$9,000 to finance a trip to other Latin American capitals to reassure them about the new military leaders.

Since learning this information, I have attempted once again to induce some Members to pursue the facts of our involvement in the Chilean situation to determine how those policies evolved and how they can be justified as being in the national interest. I have had a reasonably extended conversation with Congressman Fraser, and briefer ones with Congressman Fascell and Hamilton, in which I described what I learned from the Colby testimony. While they were indeed distressed at the details of CIA operations, nothing was forthcoming as a result of those conversations that leads me to believe that there would be further investigations or hearings into the broader policy questions that such activities pose.

I turn to you as a last resort, having despaired of the likelihood of anything productive occurring as a result of the avenues I have already pursued. It is indicative of my frustrations to note that in the five meetings this year of the Subcommittee on Inter-American Affairs, which focused on human rights in Chile, only one government witness with knowledge of U.S. activities in Chile appeared. At that hearing, Congressman Fraser and I questioned Deputy Assistant Secretary of State Harry Shlaudeman on possible CIA involvement in Chile while he was stationed there as Deputy Chief of Mission from 1969 through mid-1973. His answers, a transcript of which is attached, indicated to me some knowledge on his part of CIA activities that he was unwilling to discuss before a duly constituted Committee of the House. The inherent limitations facing Members of Congress in uncovering the facts of covert activities such as those in Chile requires, I believe, a commitment by those in a position to act beyond the existing, illusory oversight machinery.

At his confirmation hearings on July 2, 1973, Director Colby said:

"We are not going to run the kind of intelligence service that other countries run. We are going to run one in the American society and the American constitutional structure, and I can see that there may be a requirement to expose to the American people a great deal more than might be convenient from the narrow intelligence point of view."

I feel it is time to hold Mr. Colby to his commitment, as the Congress and the American people have a right to learn what was done in our name in Chile. Much as I would prefer to see this accomplished within the channels of the Congressional process, its importance convinces me that our very system of government requires that knowledge of American activities in Chile not remain solely with a handful of officials and Members of Congress. Therefore, I urge you to promptly turn this matter to the attention of the Foreign Affairs Committee for a complete, public investigation of United States relations with Chile. I trust that you will agree that the importance of this matter and its implications for future foreign policies of the United States demands no less.

Yours sincerely,

MICHAEL J. HARRINGTON.

JULY 26, 1974.

HON. MICHAEL J. HARRINGTON,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN: I apologize for the delay in responding to your letter, but have been diverted by hearings in the Committee and other related matters.

The question you pose in your letter is one of longstanding concern. The Foreign Relations Committee has attempted from time to time to examine CIA representatives; when critical questions have been asked of these individuals, we have consistently received the answer that they are responsible to the President, the National Security Council, and the informal Committee of five in the Senate, and they would not respond to specific questions involving their methods of influencing foreign elections, such as Chile.

I share your frustration in this situation, but, as you know, this has been going on in places other than Chile for many years. I have sponsored and supported efforts to create a Committee similar to the Joint Committee on Atomic Energy which would have specific and complete authority to examine the CIA and exercise some control over their activities. As you will recall, the Congress did not support these efforts. Furthermore, I do not believe that a thorough investigation by the Foreign Relations Committee would produce very much beyond that which we already know, and if it did, unless there is a tremendous change in the attitude of the members of the Senate, nothing could be done about it. In short, the Senate at least has been unwilling to exercise serious control of the CIA, and apparently approves of the activities to which you refer in Chile and which I believe to be a procedure which the CIA has followed in other countries.

The Committee on Foreign Relations is beginning, on the 8th of August, an in-depth study of the problem of our relations with the Communist world. These hearings will not bear directly upon the problem of the CIA, but will involve the basic policy in which the CIA thinks it is involved in their covert activities.

I believe, in spite of our frustration, that the creation of a Joint Committee, with full authority to examine the CIA and control it, is the only practical answer to the problem. The Foreign Relations Committee, in a show down, never has sufficient votes to overcome the opposition of the forces led by the Armed Services Committee in the Senate, but a Joint Committee, if it felt disposed to do so, I think would have sufficient prestige to exercise control. If you think well of this idea, I will be glad to join with you in sponsoring a renewal of the effort to create a Joint Committee on the Intelligence Community.

With all best wishes, I am,

Sincerely yours,

J. W. FULBRIGHT.

SEPTEMBER 11, 1974.

Hon. J. WILLIAM FULBRIGHT,
Chairman, Senate Foreign Relations Committee, 1215 Dirksen Senate Office
Building, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing to reaffirm my request to you of July 18, 1974, that you initiate open hearings in connection with United States policy with respect to Chile during the Allende period.

As you know, Mr. William Colby, Director of the CIA, in recent newspaper reports, is reported as having stated that the CIA is an instrument of policy, that it does not make policy, and that in connection with the Agency's clandestine activities in Chile during the Allende period, the Agency was implementing the foreign policy of the United States. Hence, I believe that the issue rests squarely within the jurisdiction of the Senate Foreign Relations Committee: who made the policy which led the Central Intelligence Agency to undertake the extensive clandestine activities designed to subvert the Allende government.

In my opinion, an accounting to the American people and the Congress is in order and we should demand that accounting from Secretary of State Kissinger who, according to Mr. Colby, was the author of the policy toward Chile.

It is no longer acceptable for the Congress to acquiesce in State Department officials' coming before Congressional committees and making statements which, if not outright lies, are at least evasions of the truth. I urge that your committee, before which State Department officials have testified on this matter, reopen its inquiry in light of what we now know, and determine whether or not transcripts of their previous testimony should be transmitted to the Department of Justice for perjury.

Yours sincerely,

MICHAEL J. HARRINGTON.

STATEMENT BY REPRESENTATIVE JOHN J. FLYNT, CHAIRMAN, COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT, U.S. HOUSE OF REPRESENTATIVES, TO MEMBERS OF THE COMMITTEE AT A MEETING CONVENED ON THURSDAY, NOVEMBER 6, 1975

Members of the Committee, it is my duty to state to you certain facts came to my attention on yesterday relating to the complaint filed by Representative Robin L. Beard against Representative Michael J. Harrington. The substance of the Beard complaint is fully known to all on the Committee. However, because the facts I am about to relate are directly relevant to the complaint, I will briefly restate it.

In summary, Mr. Beard has charged Mr. Harrington with violation of Rule XI, Clause 27 (o) of the Rules of the House in the 93rd Congress. It is Mr. Beard's charge that, under Rule XI 27 (c) of the 93rd Congress, Mr. Harrington obtained access to executive session testimony taken by the Special Subcommittee on Intelligence of the House Armed Services Committee on 22 April 1974 from CIA Administrator William E. Colby concerning the CIA and the government of Chile. It is further Mr. Beard's charge that Mr. Harrington divulged the executive session testimony without the consent of the Armed Services Committee, in violation of Rule XI 27 (o) and in violation of the Rules of the Armed Services Committee concerning access to executive session testimony.

At a hearing of the Special Subcommittee on Intelligence of the Armed Services Committee held on 25 September 1974 for the purpose of inquiring into the disclosure of the 22 April 1974 testimony, Mr. Harrington testified under oath and, for all intents and purposes, admitted that he had disclosed testimony as subsequently alleged by Mr. Beard.

The record of the 25 September 1974 hearing of the Special Subcommittee on Intelligence includes copies of letters addressed by Mr. Harrington to Senator Fulbright and Representative Morgan (Pages 31 through 37, H.A.S.C. 94-12). In those letters Mr. Harrington stated that he had read the Colby testimony and that it appeared in "testimony given on 22 April 1974 by Mr. Colby who was accompanied by a Mr. Phillips. Also in attendance were Chairman Nedzi and Frank Slatinshek, Chief Counsel of the House Armed Services Committee."

We have discovered, as of 5 November 1975, that, in fact, no public notice was sent out to call the 22 April 1974 meeting. No quorum of the Special Subcommittee on Intelligence appeared for the meeting. No vote to go into Executive Session was taken and there was only one Committee Member, Chairman Nedzi, present when Mr. Colby testified.

Since House Rules in the 93rd Congress required an affirmative vote of a majority of a quorum of a Committee to close a meeting for executive session and, further, required the presence of at least two members for the purpose of taking testimony, we are required to find that the "hearing" which was believed to have been held was a nullity.

In other words, no executive session occurred and the information divulged was not taken in an executive session of a Committee of the House of Representatives.

Until this information was made known to your Chairman and other Members of this Committee yesterday, all proceedings of this Committee on the Beard complaint had been premised on the understanding and upon being informed, that, in fact, an executive session had occurred and that the information that had been disclosed had been given at such a session.

Since it has now been made known that the premises upon which the proceedings of this Committee have been based are not valid, I believe we have no recourse except that of dismissing the Beard complaint.

Accordingly, the investigative hearings which were scheduled to commence next Tuesday, 11 November, should be dismissed if the Committee so directs.

OVERSIGHT OF U.S. GOVERNMENT INTELLIGENCE FUNCTIONS

THURSDAY, FEBRUARY 5, 1976

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The committee met, pursuant to recess, at 11:15 a.m. in room 3302, the Dirksen Senate Office Building, Hon. Abraham Ribicoff (chairman of the committee) presiding.

Present: Senators Ribicoff, Allen, Chiles, Nunn, Glenn, Percy, Roth, Javits, and Weicker.

Staff members present: Richard A. Wegman, chief counsel and staff director; Paul Hoff, counsel; Paul Rosenthal, assistant counsel; Marilyn A. Harris, chief clerk, and Elizabeth A. Preast, assistant chief clerk.

Chairman RIBICOFF. The committee will be in order, 15 minutes late.

I noted, Mr. Secretary, in some of your comments, in Hollywood the other day, when you stated, "I have been cited in contempt of Congress. However, I want it known that I spent 7 years in Washington, concealing my contempt of Congress."

I hope your being late is not to prove that you actually do have contempt for Congress.

Secretary KISSINGER. Mr. Chairman, first of all, that was a humorous remark, and it was not exactly quoted correctly. I said some of my friends make that allegation.

Second, my apologies for being late. I was delayed by the President and the traffic jam.

Chairman RIBICOFF. You may proceed, sir.

TESTIMONY OF HENRY A. KISSINGER, SECRETARY OF STATE

Secretary KISSINGER. Mr. Chairman, I welcome this opportunity to appear before this committee to give you my views on the relationship I hope will develop between the Congress and the U.S. intelligence community.

The executive-legislative relationship and foreign policy first.

It is essential that a sounder relationship between the executive and the legislative evolve. The present relationship has reached a point where the ability of the United States to conduct a coherent foreign policy is being eroded.

This is certainly true in the intelligence field. One has only to look at the recent leakage—indeed, official publication—of highly classified material and the levying of unsubstantiated charges and personal

attacks against the executive to see the point the relationship has reached and the harm we are doing to ourselves.

This situation must be unacceptable to us in both branches of the Government, and it must be unacceptable to the American people. Fundamental changes are taking place in the world at an unprecedented rate. New centers of power are emerging, altering relations among older power centers. Growing economic interdependence makes each of us vulnerable to financial and industrial troubles in countries formerly quite remote from us. And, most important, we are working hard to establish more rational and reliable relationships with powers whose values and interests are alien and inimical to us and who, in some cases, have the power to destroy us.

The conduct of foreign policy in this complex and fast-changing situation requires that there be close coordination and mutual trust between Congress and the executive branch and a large measure of trust in both branches by the American people.

I am aware of the benefits of a certain amount of dynamic tension between the branches of our Government. Indeed, the Founding Fathers designed this into the Constitution with the principle of the separation of powers. But there is an adverse impact on the public mind in this country and on our national image abroad when this beneficial tension deteriorates into confrontation. We have recently seen this happen. This is why I hope this committee and the Congress as a whole, with the help and suggestions from the Executive, can construct an oversight mechanism for U.S. intelligence that can bring an end to the strife, distrust, and confusion that have accompanied the investigations of the past year.

I look to the development of means by which Congress can participate more fully in the guidance and review of the intelligence activities of this Government and by which the Executive can direct and conduct those activities with the confidence of being in step with Congress in this vital area of our foreign affairs.

THE NEED FOR INTELLIGENCE

Our foreign policy must cope with complex problems of nuclear and conventional arms races; traditional and ideological disputes which can trigger wider wars and sweeping economic dislocations; emerging new nations which can become the arena for great-power contests; environmental pollution, food shortages, energy maldistributions which affect the lives of hundreds of millions; and financial shifts which can threaten the global economic order. In the face of these great challenges our goals are to foster the growth of a rationally ordered world in which states of diverse views and objectives can cooperate for the common benefit. We seek a world based on justice and the promotion of human dignity.

We cannot pursue these goals in this hazardous world unless we are secure, and we cannot be secure unless we are strong and alert. Our ability to be both strong and alert depends in part on good intelligence.

To be strong, we must know as precisely as possible how we are threatened. In this age of highly sophisticated and expensive weapons systems, we cannot afford to arm ourselves against all possible threats; we must concentrate on those that are most likely in order to save our

resources for other purposes that make our country economically, socially, and morally strong.

To be alert is not just a matter of knowing where the dangers of war and change are increasing, basic as that knowledge is. We must have the knowledge essential to our ability to try to help reduce the dangers to peace. Intelligence is crucial to the future of this Nation.

To help construct a more cooperative world we must understand trends and possibilities. Intelligence is an indispensable tool in this effort.

The intelligence on which such judgments must be based can come only from a highly professional intelligence service supported by Congress and the people of this country. President Ford expressed it very well in the State of the Union address when he said:

As conflict and rivalries persist in the world, our United States intelligence capabilities must be the best in the world.

The crippling of our foreign intelligence services increases the danger of American involvement in direct armed conflict. Our adversaries are encouraged to attempt new adventures, while our own ability to monitor events, and to influence events short of military action—is undermined.

Without effective intelligence capability, the United States stands blindfolded and hobbled.

Let me give you just two examples:

Our policy to establish a more rational and reliable relationship with the Soviet Union—commonly referred to as détente—would be impossible without good intelligence. Indeed, our confidence in the SALT agreements is based in large measure on the specific provisions which permit each side to check on the compliance of the other through national technical means of verification.

Similarly, without excellent intelligence the United States would not have been able to play the leading role in seeking to bring about a negotiated settlement of the conflict in the Middle East. All agree that a new conflict there could bring the United States and the Soviet Union to the brink of war.

Let me turn to the principles involved in the congressional oversight. As I have repeatedly said, this Nation's foreign policy must reflect the values, aspirations, and perceptions of its people; it must have broad public support. The American people must have confidence not only in our policies but also in the institutions which formulate and carry out those policies. This means that our foreign policy must reflect consultation and accommodation between the executive and legislative branches. But each branch has its special responsibilities as well. The Executive must provide strong central direction of foreign policy and must consult with the Congress. Congress must provide mature counsel and must protect the confidentiality of its consultations with the Executive.

That brings me to the question this committee is addressing: How should a democracy provide for control of its intelligence activities which, if they are to be effective, must operate in secret?

It is not my place as Secretary of State to recommend how the Congress should organize its oversight effort, but for oversight to be effective and constructive, conditions must be created which will promote mutual trust in dealing with the necessarily sensitive aspects of intelligence information and operations. Both overseers and those overseen must be able to feel sure that information given in confidence

will remain in confidence. No other single condition for success is as important as this. The system cannot function in the atmosphere of distrust that has prevailed in recent months.

Rather than make specific proposals for oversight, I would prefer to set forth some general principles which I believe are important and should be given serious consideration.

First: I believe that the goal of congressional oversight should be to insure that the intelligence activities of the United States are grounded in the basic values, perceptions and aspirations of the people of this country as well as in a clear view of the national interest. Congress has a particular responsibility in insuring that this is so because intelligence does not lend itself to extensive public or media debate. This requires that the public have great confidence in the congressional oversight mechanism. Americans must be assured that their constitutional rights will not be abridged by intelligence operations.

I welcome congressional oversight because I believe it will build public confidence in our intelligence system, and we in the executive branch can benefit from the wise counsel oversight can provide. But correction of the errors of the past must not take the form of controls in the future that would stifle intelligence.

Second: I believe we must maintain the proper constitutional perspective. Under the Constitution, the conduct of foreign relations is the responsibility of the President as the Nation's Chief Executive officer. Congressional oversight must not infringe on the President's responsibility for intelligence in a way which would violate the principle of the separation of powers. The Constitution is written as it is for practical as well as for political reasons. Congress is a deliberative and lawmaking body, not an executive organ, and it is not organized to provide day-to-day operational direction to ongoing intelligence programs. Any proposal based on the idea of executive management by Congress is, in my judgment, a mistake. Existing legislation requires the President to determine that covert action operations are important to national security and to give timely notice of those operations to appropriate bodies of the Congress. I believe this is adequate for oversight. I recommend that this or a similar arrangement be continued but that it be concentrated in the oversight committee.

Third: Is the crucial matter that the information provided to the congressional oversight body must in many cases remain secret. Much of this information is highly classified and is gathered from intelligence sources and methods whose cooperation could be lost by public exposure. Some of it also bears on U.S. plans or policies whose effectiveness depends on continued protection from disclosure. Unauthorized release of such information could do great damage to national security and our foreign policy. Protection of it is a responsibility both the Congress and the Executive must share. I strongly believe that any legislation to establish an oversight committee must include safeguards for the protection of this sensitive and important information. Classified information given to the Congress should not be made public without the concurrence of the President or his representative.

As a related point, I would like to state my agreement with Mr. Colby that it is essential to establish procedures and sanctions to prevent unauthorized disclosure of classified material. Legislation for this purpose is currently under consideration in the executive branch. It

would provide for the prosecution of Government employees who disclose such information without authority.

Fourth, and last: I believe the best oversight is concentrated oversight—ideally by a joint committee. The benefits of such an arrangement are numerous: It would permit rapid responses both ways between the Congress and the intelligence community when time was crucial; it would reduce the chance of leaks by limiting the number of people with access to sensitive information; it would encourage maximum sharing of information; and it would permit a rapid development of expertise to facilitate penetrating and effective oversight.

If a joint committee is not possible, I ask that you keep the principle and benefits of concentration in mind and limit oversight to the minimum number of committees required to conduct oversight effectively.

In concluding, I would like to express again my fervent hope that we can rapidly end the divisive debate over the intelligence community which has been so harmful over the past year. I hope this committee will quickly complete its task of establishing effective oversight so that we can all turn to the real challenges that face us in this dangerous world.

I stand ready to help in any way I can, and I am ready to answer any questions you may have.

Chairman RIBICOFF. Thank you very much, Mr. Secretary.

If there is no objection, each member will confine himself to 10 minutes of questioning on the first round.

Mr. Secretary, does the administration support the creation this year of a new congressional committee on intelligence oversight?

Secretary KISSINGER. Yes.

Chairman RIBICOFF. Chairman Church and several other members of the Select Committee introduced a bill creating a new Senate Committee on Intelligence.

Does the administration have any position on the Church bill?

Secretary KISSINGER. Our preferred position is a joint committee. The next best thing would be one committee in each House that concentrates the intelligence oversight, so we support this part of the Church bill.

There are other provisions in the Church bill which we cannot support, such as the prior approval by the committee of covert operations.

Chairman RIBICOFF. We complete our hearings tomorrow. Congress takes a recess until the 16th. On the 18th, this committee will start marking up an intelligence oversight bill.

Could we expect from the administration its point of view on the bills, including the Church bill, and suggestions from the administration before the 18th indicating what its position may be?

Secretary KISSINGER. I would hope so. I would like to make clear that I do not have principal responsibility for developing the administration's position on these bills.

The President has before him various approaches to the organization of intelligence which include also his final position on the attitude to take toward congressional oversight.

I hope that they can be completed before the 18th.

Chairman RIBICOFF. According to Senator Church, you told his committee that an oversight committee should be briefed in advance before any significant covert operation.

Your statement this morning suggests a committee of Congress—I read from page 8—should have timely notice of covert operations. Does your reference today to timely notice mean advance notice?

Secretary KISSINGER. Excuse me.

Chairman RUBINOFF. Does your reference today to timely notice mean advance notice, as you indicated to Senator Church when you briefed his committee?

Secretary KISSINGER. Let me separate two things, Mr. Chairman.

I would think that a wise administration would consult with an oversight committee prior to conducting a covert operation. This is a different matter from writing in the law a requirement that would preclude an administration under conditions of emergency or under conditions that have some special now unforeseeable conditions that would preclude the administration from conducting such operations.

So I would think that on the whole, the notice should be timely, which means literally—and which in fact would probably mean—some consultation ahead of time.

Chairman RUBINOFF. What do you think should happen in the event that a majority of an oversight committee disagrees with the proposed operation?

Should the President go ahead with the operation in spite of congressional opposition as conveyed to the President before the operation starts, or while it is being contemplated?

Secretary KISSINGER. Again, I would separate the practice from what the law should be.

I would think that as a practical matter the President would have to weigh very seriously, take very serious account of an opposition of a congressional oversight, just as we would take very seriously, say, the opposition of the Senate Foreign Relations Committee to a major departure in policy.

If, however, the President believes that the overwhelming national interest requires him to proceed even when the oversight committee disagrees, then he should have the right to do so, recognizing that this may lead to a constitutional confrontation, and that it cannot be either in his interests or in the interests of the country to provoke that.

Chairman RUBINOFF. I have been following your speeches in the last few days, in your western trip, and you talked about the need for close cooperation between the executive and Congress if we are going to have an effective foreign policy.

I think all of us agree with you. Yet, if the President or the Secretary of State proceeds with an operation in spite of congressional opposition, how can you have cooperation?

Let us take Angola. Here is a typical example of where the President and yourself are in serious trouble, because there is an overwhelming sentiment in the Congress against our involvement in the Angolan situation—and this has been indicated by heavy votes against covert aid to Angola, both by the Senate and the House.

Now, could not this have been obviated if you had told the oversight committee in advance of your intentions in a place like Angola and immediately could have received the warning bells from a representative group of Senators that this is just not going to fly in the Congress and in the country?

What would you have done under those circumstances?

Secretary KISSINGER. Mr. Chairman, first of all, the administration followed the existing procedures with great care. There was no oversight committee. There were three oversight committees in each House, plus the two intelligence committees.

Each of these committees was briefed not once but several times. Every time a new decision was made with respect to Angola, these committees were briefed. Altogether, 8 congressional committees were briefed 24 different times. Over 20 Senators, over 100 Congressmen and over 150 staff members were briefed about what we were doing in Angola.

We did not get the warning bells that you mentioned.

It does not mean that everybody agreed with it, but I think you will agree, Mr. Chairman, there is a difference between some quibble or with some disagreement about policy and a clear indication that the Congress would absolutely or strongly oppose this.

Maybe there was a breakdown in communication, but the fact of the matter is that we not only complied with the letter, we complied with the spirit in the sense that every time something new was done in Angola, we either briefed the committees just before or just after the decision was made and well before it was underway to full implementation.

We did not receive the warning bells.

The second question is whether something flies in the Congress or in the public depends very importantly on how the issues are presented and therefore the nature of the Angola debate has taken a turn that was not foreseeable on the basis of the congressional consultations that we engaged in before that.

I would hope, however, that an oversight committee with a regular procedure, with a clearer understanding of the mutual responsibilities could avoid the problems that we have faced with respect to Angola.

But I would like to say one final thing about Angola, Mr. Chairman.

We know the congressional sentiment and we are going to abide by it, but we also have an obligation to put before the country our concerns as to the impact on future policy, even if it does not affect the immediate decision.

We have to prevent similar things from happening again, and therefore we have an obligation to state what we think the foreign policy implications are. And that does not indicate a disrespect for the Congress, it indicates a necessity of shaping the public debate if a similar circumstance should arise again.

Chairman RIBICOFF. Secretary Kissinger, I owe you a personal apology. I understand that Mrs. Kissinger went to the hospital this morning for surgery and that this was the reason you were late for the committee. I want to state that I was not aware of that.

Secretary KISSINGER. She is going tomorrow, but we had to wait for the medical report.

Chairman RIBICOFF. One final question.

In view of what you have said, may I say that speaking for myself and, I believe I have talked personally and privately with practically every member of this committee, we in this committee are not committed to any specific oversight method, the Church bill or any other bill. We approach this problem with a deep desire to come up with an oversight committee so established as to do a responsible job to achieve

what you seek, good cooperation and effective cooperation between the Executive and Congress.

So the question of prior notice is going to be very important for us, including the problem of what is done in the event that there is a basic disagreement between the majority of the committee and the Executive? How do we make this known to the Congress as a whole?

That is why I am anxious to have the point of view of the executive branch.

That view will be considered very carefully and respectfully, and I would hope that you would make this known to the President and to whoever is working on it that we are under direction by the Senate to report a bill by March 1. As far as the chairman is concerned, we will do everything possible in this committee to get the bill out by March 1, and I would hope that we do not wait until February 28 to receive the recommendations from the executive branch.

Secretary KISSINGER. I will transmit this to the President. I know he is working very hard on developing his own recommendations. I just do not know what deadline he is working against, but we will certainly communicate this, and hope that we can cooperate with this committee.

Chairman RIBICOFF. Senator Percy?

Senator PERCY. Secretary Kissinger, is there any question in your mind that Congress has failed in the past to exercise the proper, legitimate oversight responsibility with respect to our intelligence operations?

Secretary KISSINGER. It is difficult to know what the definition of effective oversight is. I believe, in light of events, that a more coherent oversight procedure, one in which the public can have a greater degree of confidence, is in the national interest.

Senator PERCY. Is it essential that we carry on an effective intelligence operation, including possibly covert activities and is it essential that we do organize ourselves so that we can work effectively, harmoniously, and cooperatively with the executive branch?

Secretary KISSINGER. I think that it is vital for the United States to have an effective intelligence service that is independent of really both the Executive and congressional direction but is subject to Executive direction and congressional oversight.

Senator PERCY. Because of your recent comments about Congress, I would just like to personally assure you that this committee, the membership that you see here, and others that are unable to be present, has conducted, I think, the finest set of hearings that I have ever participated in, in 9 years.

The chairman has said that within his power he is going to report a bill out, the best bill we possibly can on the deadline schedule of March 1. I can assure the chairman, from the minority standpoint there is no partisanship in this matter whatsoever. We will diligently work toward that deadline. We have had a body of evidence to date that has been extraordinarily helpful in enabling us to put together something we think is essential and in the national interest.

Secretary KISSINGER. Let me make clear what my concern is, Senator. It is not a question that individuals are behaving unpatriotically, arbitrarily, or with anything but the best intentions.

My concern is not what will happen this year. My concern is that as we look ahead, 2, 3, 4 years, how the United States can conduct an

effective foreign policy, and it can do so only if it appears to other nations as representing essentially one voice when it acts in the field of foreign policy, and the tragedies that can occur in the conduct of foreign policy are precisely those when men of good intentions, pursuing the best motives on each side, are producing paralysis with the best of intentions.

And I am trying in my public speeches not to win an argument between the Executive and the Congress, because I recognize that the Executive also has to change some of the procedures that have developed in recent decades, but to find a basis by which a coherent, long-term national policy is possible, in which the Executive does those things that really the Executive is designed to do, and the Congress in turn exercises the oversight and the guidance over basic policies which have been assigned to it.

It is not criticizing this or that decision which is always taken in the best of ways.

Senator PERCY. Again, I would like to assure you, there are two of us here who sit on both the Foreign Relations Committee and Government Operations Committee. The climate in which we are working is extraordinarily difficult. We cannot overlook 10 years of Vietnam. We have had a divisiveness between us.

We were misled. We were lied to. There was policy adopted that later proved to be disastrous. It was out of control in a sense, and that is the climate in which we began to work. And then the Watergate climate did not contribute to your work or our work as well. In respect to the intelligence operations, we did not handle ourselves well. We did not exercise and fulfill our responsibility.

But also, there is fairly solid evidence that the Congress was misled, was lied to on occasion, so it is in that climate that we are now trying to reconstruct a relationship.

I can assure you of that even though the statement you made on the West Coast that our domestic divisions are more dangerous to this country than our overseas adversaries is a pretty strong statement.

Secretary KISSINGER. I did not make that statement.

The statement I made is that the foreign policy design is in relatively good shape and that our domestic divisions at this moment are impeding the conduct of foreign policy. That is not the same thing as saying that our domestic divisions are more dangerous to us than our foreign adversaries.

The basic problem that we face is that when the scope of national action is the greatest, the knowledge to base such action on is inherently ambiguous. Therefore, it is essential that there is a minimum of trust and confidence, not only the relation between the executive and the legislature, but also in the relations between the public and the whole Government, and without a degree of faith in the future, without some confidence that responsible people are trying to do a serious job, we will paralyze ourselves, and if we turn the governmental process into one gigantic permanent investigation into motives, then we may achieve purity but we will also achieve paralysis.

Therefore, what I said—and I think if you read the text, I do not know what newspaper account you refer to—

Senator PERCY. This is from the New York Times this morning.

Secretary KISSINGER. If you read the text of what I said it did not say foreign adversaries are less dangerous to us than our domestic division. I said that our domestic divisions are inhibiting the conduct of our foreign policy, and I grant you, that Vietnam, Watergate and its aftermath, and many of the mistakes on the part of the Executive have contributed to this situation, but the problem we face is when are we going to turn to the future.

Senator PERCY. The subheadline on this story is, "He sees a greater threat at home than abroad," and the first paragraph indicated, "He said today the United States is more endangered by its domestic divisions than by overseas adversaries."

I know the point you are trying to make. I think it is a good point. I think these talks around the country have been immensely valuable and very important.

I think it would be helpful rather than just emphasizing our divisions to say in some areas that we are really working together. On the Middle East, I think we have had marvelous cooperation between Congress and the executive branch on the whole. I think our relationships on China and the Soviet Union on SALT have been extraordinarily good.

I think you are going to get a lot of backup on the Concorde decision now. It was a very important foreign policy decision as well as a domestic one, I think, on Cuba.

You are getting support on the military assistance bill now on the floor.

I would just hope that we would put balance into our relations. It is not all bad, it is not all good. We are trying to reach out.

Secretary KISSINGER. When you give a 45-minute speech and three paragraphs are reported, it is difficult for both the newspapers and the readers to judge what the balance of the speech was.

Senator PERCY. In our session on this legislation we are dealing with today, I understand from your testimony that you prefer a joint committee.

Secretary KISSINGER. I prefer a joint committee.

Senator PERCY. That can only be done if the House concurs.

Secretary KISSINGER. Yes.

Senator PERCY. If they do not concur, then we have to go ahead. If we feel ahead of time that they are not going to, it would be futile for us to send a bill over there and delay it a year if they are going to hold it up. Then we have to go ahead.

Do you see any possibility that we can combine in that same committee, if there is a House and a Senate committee, the authorization and appropriation authority, so you only have to really reveal everything to one committee in the Senate and one in the House and not proliferate it by four or eight, as it is now?

Secretary KISSINGER. I cannot really tell the Senate how to organize itself. As far as the executive is concerned, the more concentrated the oversight procedure, the easier it will be to share the maximum of information.

Senator PERCY. I personally feel it would be disastrous for the Congress to be in a position to veto covert actions ahead of time. I do think, however, that more control and oversight is needed.

Attorney General Katzenbach recommended that such actions be committed to writing before they are put into effect, so that the record would be there clearly and so that it could be subsequently examined. Many times if an action were committed to writing it may not be enacted, because it may not look as wise as if it were all done verbally.

Would you favor such an activity, committing such decisions to writing, so at least, under the highest classification, we have a record that subsequently can be looked at with all of the reasoning behind it?

Secretary KISSINGER. Within the executive branch, the major operations—I think nearly all of them—are reduced to writing. I have not considered the submission of them in writing to a congressional oversight committee, but speaking off the top of my head, subject to later reconsideration, right now it seems to me a feasible procedure; in many respects a desirable procedure.

Senator PERCY. At the present time, a cover is provided for CIA agents and intelligence officials abroad through our embassies. Do you think that this is any longer appropriate?

Does it detract from the value of our embassies abroad and their credibility?

Also, do you think that business people and journalists should be used in the future in the light of what we now know and the difficulty of preventing them from being revealed?

Secretary KISSINGER. You cannot have a cover unless you use somebody, and if every professional group takes the position that their professional ethics are going to be impaired if they are used as a cover, then we will not be able to have cover.

On the question of journalists, I would think that it is undesirable to use them professionally, because it is a profession that is so clearly dependent on its public standing of independence that I think that the allegations that have been made, the accuracy of which I have not had a chance to go into, about journalists having been used by the CIA do grave damage to a profession that depends on its impression—and correct impression—of integrity and independence.

With respect to business or the State Department, the problem is the one that I mentioned before. Obviously, any time you use something as a cover, you hardly represent its real function, but unless you do that, you do not have a real cover, and I would not want to make a flat statement about which can and cannot be used. I cannot, in a public hearing, even confirm that the State Department is so being used.

Senator PERCY. It could be a discussion with the new committee, though.

Thank you very much.

Chairman RIBICOFF. Senator Allen.

Senator ALLEN. Thank you, Mr. Chairman.

Mr. Secretary, did the administration decide to support a separate oversight committee or committees as a result of its considered judgment as to what is in the national interest and what is in the best interest of our national security, or because apparently there is strong sentiment in the Congress for such an oversight committee.

Secretary KISSINGER. Well, we are, of course, aware of the strong sentiment in the Congress in favor of such an oversight committee and I must say that I have found that the Armed Services Committee, in

my limited contact with them on the subject, have attempted to exercise a very responsible role.

The difficulty we have faced recently is, as Director Colby pointed out, every covert operation that we have attempted in the past year has leaked to the press within a matter of weeks or, at most, months, so that we have brought about a situation where we, in effect, have deprived ourselves of the covert capability at a time when—

Senator ALLEN. Did that come from the standing committees or the investigating committees?

Secretary KISSINGER. It comes in part from a situation in which it is almost impossible to pinpoint the responsibility because we are now briefing three regular committees. We are not briefing any more only the Armed Services committees but three committees in each House are being briefed as standing committees; on top of it, the two intelligence committees.

From where we sit, it is impossible to tell where it comes from.

For us, the big problem has been with six committees to be briefed. The responsibility has been so diffused, the procedures of each committee so different—some committees brief only 2 members, other committees brief 12 members—so that we would prefer to have one regularized oversight committee with which we can work out agreed procedures and which then can assume, on its part, responsibility for the security of information.

Senator ALLEN. Do you think then that the creation of the oversight committee will be in the interests of national security?

Secretary KISSINGER. I believe so; yes, sir.

Senator ALLEN. Should this oversight committee, or committees, should they give the intelligence agencies a broad outline in that acts or practices are permissible, or should they clear every action of the intelligence agencies?

Secretary KISSINGER. I think in the nature of things, no committee can possibly supervise every act of an executive department.

If you look at the huge staffs that the executive departments have—maybe bloated, but still, they have to have some relationship to the problem and the amount of time they have to spend on these problems—then it is impossible for a congressional committee or for the Congress to organize itself to supervise every aspect of their day-to-day activities.

I think the strategy of oversight ought to be to determine those fundamental policy issues or those issues of the greatest sensitivity on which the Congress will set down the guidelines and to leave some margin for an executive discretion—always subject, of course, to the fact that the oversight committee having control of the budget can seize itself of any problem it sees rising to a level of policy.

Senator ALLEN. Certainly one of the key words in a successful intelligence operation is secrecy.

Do you think that the creation of a separate oversight committee would result in more or less secrecy than we had prior to the time that the investigating committees started their work?

Secretary KISSINGER. In that period, on the whole—in fact, not only on the whole, but fully until then—secrecy was being maintained extremely well.

The argument that is being made now is that secrecy was being maintained at the price of control, so we are looking for a method of oversight by which those two objectives can be reconciled.

But we have no complaint whatever about the degree to which confidential information was being safeguarded, prior to the beginning of these investigations.

Senator ALLEN. Of course, we will not insist on an answer to this question, but would you be willing to evaluate the work of the House and Senate investigating committees?

Secretary KISSINGER. The Senate committee has done its job. I disagree with some of the emphasis they placed and with some aspects of the manner in which they put information together, but they had a mass of information to deal with, and I think they attempted to do—within the limits of pressure did do—a responsible job. I have serious question about the wisdom of publishing some of these reports, but I do not have any major quarrels.

I disagree with some of their interpretation of facts, but that is their privilege.

On the House committee, I have to say that they have used classified information in a reckless way, and that the leaking of covert operations to the press created an impression that was totally untrue and damaging to the national security.

Senator ALLEN. These proposed committees or a single oversight committee, I gather you would like for the membership of the committee or committees to be limited in number. Would that be correct? A smaller number?

Secretary KISSINGER. Yes; I would prefer—

Senator ALLEN. The smaller the number, the greater the hope or chance of secrecy, is that correct?

Secretary KISSINGER. That is right.

Of course, in relation to what is a meaningful degree of oversight, which means there has got to be a minimum number that will make the Senate feel that a responsible oversight is being exercised.

Senator ALLEN. Back during World War II, the German code was broken and the Japanese code was broken. Do you think information of that sort would be safe in the hands of a congressional oversight committee?

Secretary KISSINGER. I would think on the basis of the experience of the past year, I would have to say no, but it is my understanding that this committee is trying to develop procedures in which the congressional committees would apply the same standards of secrecy and confidentiality.

I would certainly be openminded on the possibility that this can be achieved. I believe that if the proper penalties are developed, the proper security procedures are followed, the Congress can do that.

Senator ALLEN. I have been trying to decide in my own mind what would prompt a Member of the House or the Senate or a staff member of any of these committees to leak sensitive information, and I have listed here possible reasons why a man or woman would release or leak sensitive information.

I would list first, lack of patriotism. Second, desire to feel important. I think that is one of the major reasons; possibly malice toward the agencies; possibly philosophical reasons. Then, desire for—and this:

would apply more to a Member of Congress than a staff member—desire for favorable treatment from news media on other matters. Then the possibility of a committee member or a staff under him being outvoted in the committee as to whether a certain covert activity should be carried out would then leak the information.

Do you feel that these are some of the factors that might cause leaking of information, and would you care to stress any one or more of those as motivating causes for the release of information?

Secretary KISSINGER. In my experience, the primary cause of leaks seems to have been an attempt to influence decisions which were not likely to go in the favor of those who were doing the leaking. I would say this is true in the executive branch as well as in the legislative branch.

Another reason could be an objection in principle to a type of operation. For example, there are those who believe with great fervor that the United States should never conduct covert operations, and therefore they believe that they are helping the country if they leak covert operations or if they present them in such a way that it looks as if only knaves and fools would execute them.

These, in my experience, have been the principal reasons for leaks. Incidentally, both the executive and the legislative branch—I think there have been leaks also out of the executive branch on certain of these items.

The other motives I would not want to speculate upon.

Senator ALLEN. Mr. Secretary, I might say in my home State of Alabama, the people are distressed by the damage that has been done about intelligence agencies as a result of leaks from the investigation of the activities of the intelligence agencies.

Thank you.

Chairman RIBICOFF. Senator Javits?

Senator JAVITS. Thank you, Mr. Chairman.

I am glad you said what you said a moment ago, Mr. Secretary, that there have been leaks in the executive as well. We have concentrated on leaks by the Congress and I noticed with great interest when you read your statement, you omitted what I considered to be a key phrase, and I would like to ask you about that.

Page 9: "It would provide for the prosecution of Government employees in both the Congress and the executive who disclose such information without authority." You omitted the words "in both the Congress and the executive."

Does that represent anything?

Secretary KISSINGER. I sometimes cut these in reading. I stand behind the whole statement.

Senator JAVITS. Is it not true that there have also been accusations that the product of the intelligence agencies insofar as it was communicated to the Congress and the country was affected by political considerations?

Secretary KISSINGER. Could you repeat that?

Senator JAVITS. In other words, the administration would affect what was reported by way of intelligence either to the Congress or the country or both in order to slant a decision a certain way, because it had a political view that it wished to serve. There has been testimony on that.

Secretary KISSINGER. There may be testimony to that effect, but I would reject it.

Senator JAVITS. You would reject it.

Secretary KISSINGER. Absolutely.

Senator JAVITS. Is there any caution taken in the executive department to see that that is not done?

Secretary KISSINGER. The way that a political decision could slant a judgment of the intelligence agencies would be for either the President or his closest advisers to dictate to the intelligence community what kind of estimates they wanted. That, to the best of my knowledge, has not been done by any administration and it would be one of the most foolish things for any administration to do, because the wisdom of their decisions depends on having the most accurate information possible.

In fact, I would say that is most likely to produce politically slanted intelligence estimates is if these intelligence estimates have to be defended against a large public on the basis of whether or not they are temporarily popular or not.

I would think that a tightly organized oversight system could contribute to the nonpolitical nature, but I do not believe that politically slanted intelligence estimates have been a problem and have ever existed in any administration.

or his closest advisers to dictate to the intelligence community what

I know no example where this could be accurately stated.

Senator JAVITS. We have certainly had testimony of the misuse of intelligence agencies for political purposes, in the Watergate case, did we not.

Secretary KISSINGER. That is true, but that is not saying that any directions have ever been affected by political considerations.

Senator JAVITS. You maintain that is true respecting the Vietnam war as well?

Secretary KISSINGER. I can only talk about the period since I have come to Washington.

Senator JAVITS. The statements that you have made are limited to the period?

Secretary KISSINGER. Limited to the period.

I do believe we should start with an assumption that those that are in high executive positions may be misguided, but they are trying to do the best thing for the country. This is the only thing that makes it ultimately worthwhile, so they would not engage in a deliberately fraudulent exercise within the Government.

Senator JAVITS. In the Foreign Relations Committee, of which I am a member, we had a very, very queasy feeling about that in respect to that Cambodian invasion. The facts that were presented to us, and what was going on and represented to us. Be that as it may, the point is, as I understand it, whatever legislation the administration proposes will apply equally to the Congress and the Executive.

Secretary KISSINGER. You mean the standards of secrecy?

Senator JAVITS. Security of information.

Secretary KISSINGER. Absolutely.

Senator JAVITS. My colleague, Senator Case, mentioned the other day that there was some suspicion that leaks were planted even by the CIA in order to discredit the Congress.

Is there any truth to that, as far as you are concerned?

Secretary KISSINGER. Not to the best of my knowledge.

Senator JAVITS. Is not the key question, Mr. Secretary, who was to tell who what and what is to be disclosed to the public, and is it not a fact that this is very deeply affected also by the Constitution of the United States? Whatever may be the role of the committee, it is not the Congress, it is not the Senate, it is not the House, it is not both. So that one of the nuts that we have to crack, and I certainly appreciate your advice on it, is how do we handle that? How do we prevent a situation which is very inimical to the American system where a committee member would have to deny information to his fellow Members of the House or Senate simply because it was entrusted to him in confidence, when every Senator and every Congressman must treat every committee as his agent?

How are we to make wise decisions if we are not privy to basic information?

Secretary KISSINGER. I think it is largely a problem for the Congress to answer, because it is obvious that if the Executive must get all of its intelligence information to the oversight committee, or all of its significant intelligence information to the oversight committee, and every member of the oversight committee feels an obligation to share it, at least with all other Senators, then the procedures as to secrecy are going to be much more difficult to enforce than if there are some limitations placed on what can be shared, but what these limitations should be is a delicate matter that I think the Senate has to work out for itself.

Senator JAVITS. Is it not also, Mr. Secretary, a function of discipline in both the executive and the congressional branches? In short, is it not a fact that under the Constitution, all of this information has to be shared and that we cannot avoid it. Although you spoke of the fact that what might take place in disclosures are "impeding the conduct of our foreign policy," there is also the advice and consent function, the right to investigate and inquire and get anything in the way of information by the Congress. Is it not a fact, therefore, that it is the enforcement of discipline—and by law in terms of criminal and other sanctions with respect to these matters—that must be relied on, and there both the Executive and the Congress have equally been derelict?

Secretary KISSINGER. The problem is, the question that has to be answered is: What is it that the Congress wishes to oversee or must oversee in pursuit of its constitutional functions with respect to the advice and consent required by the Constitution or the court practice that has developed since the writing of the Constitution?

Take, for example, the theoretical case that was mentioned by Senator Allen. Suppose we had broken the code of some country. Suppose we had informed the committee of this and suppose that information becomes public. We will have inflicted irreparable damage on ourselves, because once that information has become public, the code will be changed, and it is irretrievable. That has been the reason that newspaper stories—which could have come from the executive branch; I am not saying they came from the Congress—have appeared in which certain intelligence procedures that have not been challenged on grounds of impropriety have been described in enormous detail and, having been described, have been irreparably compromised.

This is a concern that any member of the executive branch must have, and it is something that I believe that the Senate will want to address in constructing its oversight system.

There are other operations—many of the covert operations are in a different category—that involve questions of political judgment, foreign policy judgment, as to their wisdom and as to their relationship to our overall foreign policy.

They lend themselves better to oversight, but there the damage that can be done will not be as irretrievable as it is in the case of technical information, although it could be very egregious if proper procedures are not followed.

Senator JAVITS. Mr. Secretary, my time is up.

With the Chair's permission, I would like to make one observation.

I believe the solution here is—perhaps you could comment on it for the record in writing—the solution here is exactly as we resolved it in the War Powers Act. You cannot take away the constitutional authority of a President or of the Congress or any Member, but you can accomplish a great deal, in my judgement, by a methodology which will cause people to stop and consider an act and by enforcing a very strict order of responsibility by law.

I think, if you are going to try to deprive people of constitutional powers or try to fight that out in this legislation, it is doomed in advance. But if we can derive a methodology and a strict enforcement, then I think we can get somewhere.

Thank you.

Secretary KISSINGER. We would be sympathetic to that in principle.

Chairman RIBICOFF. May I make one comment?

I personally cannot conceive that anything in this oversight legislation would require the intelligence agency to disclose even to the oversight committee that they had broken a code of a potential enemy. That is not my concept of what the problem really is here today.

Senator ALLEN. May I comment on that?

I did not mean to suggest that this would be a matter within the jurisdiction of the oversight committee. I am merely using this as an example of sensitive information. I asked the Secretary if he thought sensitive information of this nature, or any other nature, would be safe in the hands of an oversight committee.

Chairman RIBICOFF. Senator Chiles?

Senator CHILES. Mr. Secretary, as we are trying to mark up this bill, I think that most of us want to touch on two other things in addition to this bill. I certainly agree that we have to have an intelligence capability. It needs to be second to none and it needs to be able to operate in secrecy, and that we can have irreparable harm done if we compromise any of those features.

I also agree with your statement that the President needs to be able to conduct the foreign policy of the country and he needs to be able to speak with a clear voice. I think there is a difference between a debate over intelligence matters, especially if we are talking about the release of any information, and a debate over foreign policy matters.

I think nothing could be healthier, perhaps, than some kind of debate about foreign policy matters. That has been one of our problems with Vietnam. Some of the problems that we had is that Congress really failed in its constitutional role of advising and consenting and failing to carry out that role.

So I would hope that your feeling would not be that we could not participate in that debate about foreign policy matters or that we are going to do irreparable harm because we are initiating or participating.

Secretary KISSINGER. I think you will find in every one of my public statements, including the one that was so scantily reported, a strong statement: One, that the balance between the executive and the legislative has to move more towards a better proportion than existed in the 1950's and 1960's and, second, that a meaningful debate in foreign policy is absolutely imperative if we are going to have public support and congressional support.

My concern is about the repeated public disavowal of executive action, sometimes in midstream, and about the impression that it has created abroad that the United States has lost the capacity for action.

Our problem is to reconcile debate with the capacity for action.

Senator CHILES. I certainly concur in that, and I concur that we need to get this intelligence matter behind us today. It is doing harm, and of course, that is one reason, in this committee, that we are going to try to work as fast as we can to get this bill marked up.

I would like to have your views on the question of the authority of the committee, be it joint or be it individual. We know it is going to be an oversight committee.

Do you have a view as to whether it should also be an authorizing committee, as such, authorizing all the funds for the agencies?

Secretary KISSINGER. Senator, I was asked this question earlier, and frankly, I have not thought it through.

As I indicated, in answer to that question, I would think that the more we concentrate oversight and financial control the easier it will be to establish that close relationship between the executive and the Congress which will be necessary to control the intelligence community.

So again, speaking off the top of my head, I would probably prefer to have it in the same committee.

Senator CHILES. Have you thought through the possible problem that if you give this committee authorizing authority, you perhaps are, in effect, giving it a veto authority?

Secretary KISSINGER. That is a problem, but you also achieve with it a greater degree of congressional support than has proved to be the case with the present divided committee responsibility.

Senator CHILES. That is all. Thank you very much.

Chairman RUBINOFF. Senator Roth?

Senator ROTH. Thank you very much.

Mr. Secretary, Senator Javits discussed the importance of procedures and methodology that I agree is extremely important. At the same time, I think whatever we set up here, whether it works or not will depend upon rebuilding trust and confidence between the two equal branches of government.

It seems to me that one of the reasons we did not have problems until Vietnam and subsequently is that we had a bipartisan foreign policy in which people largely agreed in both political parties on general objectives and goals.

The question I have is, what can we do to restore such a consensus, or do you think that is desirable? Do you think we need a great debate? What kind of forum would be needed to attempt to develop once more in this country general agreement as to broad goals and objectives?

Secretary KISSINGER. First of all, let me make one point which may not be widely popular, which is that Congress was not all that ignorant of what was going on in Vietnam as people now believe.

Senator ROTH. I would agree with that statement.

Secretary KISSINGER. We have to distinguish between mistakes in judgment that may well have been made by both branches and defective oversight. It is quite possible—in fact, it is true—that some decisions were not properly reported to the Congress. But the main lines of the Vietnam policy—that is, the gradual increase in our forces, the fact that increasingly larger expenditures were required—those facts were known to the Congress and, in fact, the Congress voted on it year after year.

So that, I think in trying to see what we can learn from the past, we should not talk ourselves into the frame of mind as if Vietnam had been entirely an Executive action.

Now with respect to your question. I believe that the coming together of the Executive and the Congress and of the public in the conduct of our foreign policy is our overwhelming foreign policy question.

I repeat, I do not think it is a problem for this year, because the Government can operate on momentum for quite awhile, but I think that in the long term, other governments are gearing their actions to their belief in whether we can execute either our threats or our promises, and a divided government, by definition, cannot do this. They can only state individual preferences, after which everything depends on how the political process will shape this up.

Therefore I believe that the restoration of what I would prefer to call a nonpartisan foreign policy is imperative.

Now again, I was not asked to testify on this primarily. There are a number of problems here.

You have this bipartisan policy in a period of strong congressional leadership. Today, it may be a helpful thing, but it is a fact of life that it is very difficult for the Executive to know who in the Congress to consult and how you can build congressional support, because, due to the reforms within the Congress, there is not any one group of leaders that can reliably inform one about what the congressional sentiment is.

I believe that some mechanism must be found, some group of people with whom the Executive can have a continuing dialog, and I believe in a public debate, but of course, it is inevitable that there will be differences, because these issues would not be difficult if everybody came to the same conclusion about them.

I think there should be some limit on the range of permissible charges. It cannot help public understanding if accusations are made that people deliberately mislead the President, people deliberately fool the Congress, as if everything is put into variations of treason or criminal activity.

I think we have to face the fact that we face a very difficult future in which no one can know today exactly what its shape will be. Its shape depends crucially on our vision and what ideas we develop.

If we can get a civilized, serious debate started, if we can identify people who can then take the responsibility of helping within the Congress and with public opinion, then I think we will be able to solve our problems and shape a more peaceful future.

I think that it is the most overwhelming national problem we have now. I think the foreign policy questions in the traditional sense are more easily solvable. This is what I meant to say yesterday.

Senator ROTH. One difference, of course, between our democracy and others is that most of them are parliamentary forms. That, in turn, means that members of the Parliament participate in the making of a foreign policy, the Secretary being a member of Parliament.

Would there be any merit, for example, in having Members of the Congress, perhaps the leadership of this joint committee or the leadership, participate in any way in National Security Council deliberations, ex officio or otherwise?

Secretary KISSINGER. If you look at parliamentary democracy, it is true that the Cabinet members—that the Cabinet members are members of Parliament and therefore you have an organic connection between the Parliament and the Executive.

But I think it is also true that, except where the Parliament is divided into many fragmented groups, the Parliament plays an infinitely smaller role in policymaking and a much smaller role in foreign policymaking in parliamentary democracies than in the United States.

There are no parliamentary hearings of any significant nature in most parliamentary democracies. The average member of Parliament, unless he is a minister, has almost no access to the sort of confidential information that our Congress can get.

So, on the whole, I think that history will show that parliamentary democracies are evolving in the direction of very strong Executive power, except in those cases where the Parliament is so fragmented that the fragmentation enables it to overthrow the Government through the shifting coalitions of parties. This then presents major problems of a different nature.

Now, concerning the participation of Congress in the actual deliberations of the executive branch, I would leave it to constitutional lawyers to decide whether this is compatible with the separation of powers. Looking at it from the point of view of political prudence, one has to weigh the greater understanding on the part of the legislative branch against the dilemma created when a Member who disagrees with the President on a decision he participated in must decide whether he should begin agitating in the Congress or whether he has a moral obligation, as do members of the executive branch, to support the decisions once they are made.

But on an informal basis, when the system works well, a serious offer is often made today to solicit the views of senior legislators before major decision are made.

But I would really like to put before the committee in all seriousness the question from where we sit of identifying who it is one ought to consult; and when the number gets too large, with the best will in the world, it becomes a problem of time.

Senator ROTH. In the 1940's there was some effort made on the part of the executive branch and the President to have Members of Congress, such as Mr. Vandenberg and others to be involved, go on foreign missions with them.

Secretary KISSINGER. I do not exclude it Senator. I really have not thought through thoroughly how to do it. I can tell you the problem

we are discussing here is one of the most preoccupying problems that I have right now, and I am not for a moment suggesting that it can be solved by the Congress rubberstamping the executive. In fact, it will help our democracy and it will help public confidence if we can get a genuine partnership in Congress.

Senator ROTH. On the one point, I would say that in any such participation, it would seem to me that it is the Members of Congress responsibility necessarily, not to remain silent, if they disagree, any more than the oversight committee would necessarily remain silent if they disagreed.

If you have any further thoughts in this area, I would very much appreciate receiving them.

Mr. Secretary, Senator Muskie and I have sponsored a bill—as a matter of fact, it was passed by the Senate in 1973—to resolve conflicts over information between the Congress and the executive branch through an expeditious judicial process.

This is designed to help Congress get information for which there is a genuine legislative need, and protect executive branch officials from criminal contempt proceedings.

In view of your experience with the Pike committee, do you think such an approach would be desirable to avoid confrontations as a result of these conflicts?

Secretary KISSINGER. The experience with the Pike committee and the general problem it raises calls attention to the need for mechanism to resolve such disputes. I am a little bit leery about getting the judicial branch involved, because very often when the case goes to court, in order to explain our decision not to release a document, one has to give more information that would then, in the nature of the judicial system, become part of the public record, and one may do more damage in trying to block release of the information than may have been done by the original disclosure to begin with.

Second: The judicial system is geared to deciding an individual case and it cannot really judge the implications of the impact on foreign governments; for example, a court might find that publication of certain documents—which it is not necessarily easy to prove—would not damage American security; but it might hurt other governments' security, hurt their confidence and their ability to talk to us.

So again, it is not a matter that I have thought through. Quite candidly, I am not familiar with your bill. These are quick reactions off the top of my head.

On the other hand, I have a certain sympathy—unbelievable as it may sound—with the Pike committee contention that if they get our documents, and then the executive branch has a type of veto over their use, then this makes their own role more difficult. My major objection to the Pike committee is the way they have distorted, falsified, documents that they have.

But some mechanism has to be developed—I do not have a good answer to it—to resolve executive-legislative disputes as to the release of information that is made available.

Senator ROTH. Mr. Chairman, my time is up.

I would just like to observe that it does seem to me that this is a logical mechanism to resolve this dispute, this question of secrecy. Court proceedings can be secret.

I would say, as a matter of fact, that procedures of the U.S. Supreme Court are probably the best-guarded secrets that I know in the country. So I would urge you to consider this approach.

Secretary KISSINGER. Obviously I have not thought it through completely.

Senator ROTH. Thank you, Mr. Secretary.

Chairman RIBICOFF. Senator Nunn?

Senator NUNN. Thank you, Mr. Chairman.

Mr. Secretary, I share your frustration about knowing whom to brief. I think that is one of the purposes of this committee hearing, and one of the most serious things we have to consider.

Even if we decide on a joint oversight committee, there will continue to be a need for committees like Armed Services and Foreign Relations to get the substance of intelligence information.

Even a joint committee, in my opinion, is not going to limit to just a few people the flow of this information.

Do you want to comment on this?

Secretary KISSINGER. Well, it depends on what you mean by "the substance." The product of intelligence will obviously have to be put before the Foreign Relations and Armed Services Committee to enable them to do their job, but it is not possible for the Armed Services Committee, for example, to make a reasonable assessment about the adequacy of our defense requests if it does not know the estimates of Soviet or other strengths on which they are based.

As I understand it, the oversight committee that is being proposed here is designed to oversee the operations of the agency, and not only the final product. In that respect, perhaps concentrating it would ease the problem somewhat.

Senator NUNN. One thing that comes to mind: We formerly got a newsletter from CIA. Of course, no body used it as much as probably would be advisable, but I found it very helpful. Now that has been terminated.

Do you plan to interrupt the flow of intelligence to the Armed Services Committee while we are struggling to get a solution to this legislative responsibility?

Secretary KISSINGER. As I understand it, your receiving the daily newsletter was a relatively recent innovation. That was not something that had existence since the origin of time.

Senator NUNN. Within the last couple of years.

Secretary KISSINGER. Certainly the flow of information that the committees must have to do their job cannot be interrupted while the Congress debates the appropriate oversight procedures, and certainly the existing oversight procedures, I would believe, should stay in place until alternative ones have been approved by the Congress.

Senator NUNN. Whose decision was it to interrupt that flow of information? Was that a CIA decision, or did it go higher?

Secretary KISSINGER. I do not know precisely who made the final decision. I would suspect that the White House certainly was involved.

Senator NUNN. Mr. Secretary, I am not defensive about the situation in Angola at all. I do think, though, that many of your statements indicate that the Congress is solely responsible for what was going on there. I did not vote to terminate aid. It was a very close question, as far as I was concerned.

Nevertheless, the administration is not without other remedies, for instance, economic sanctions; for instance, technology; for instance, food; for instance, terminating negotiations with the Soviet Union for a brief time. Yet, what we see was a congressional cutoff of aid followed by Presidential announcement that the food would continue to flow regardless of Angola, followed by the Secretary of State going to Moscow with negotiations as usual.

The combination was congressional cutoff and announcement that business would continue as usual, notwithstanding Angola.

It seems to me that Angola is a joint responsibility and the administration has not utilized fully the tools available to it short of military aid.

Secretary KISSINGER. Well, Senator, our concern with respect to Angola now is not to win retroactively an argument that in the nature of what was at issue was essentially settled by the Senate vote, but it is to alert the American public to the long-term dangers that are involved, to warn the Soviet Union and Cuba that this method, even if it should work once in Angola, cannot be a method that is compatible with relaxation of tensions or is not fraught with great danger, and to make clear to the American public what may happen in similar circumstances.

Now with respect to your particular substantive point, our strategy was designed to create a situation in December which would create the best balance of forces at that time, to permit an OAU resolution which hopefully we and the Soviet Union would then both support which would get foreign forces, on all sides, out of Angola and to permit an African solution to an African problem.

Such a strategy was obviously crucially dependent on not escalating it immediately into a massive confrontation and permitting each side to back off it, and second, it was very crucially dependent on the problem of time.

All of the measures that you have proposed would have taken a long time to work and at the same time escalated things prematurely into a massive confrontation. It was always clear to us that if these other measures that we were pursuing in December would not work, then some of the more blunt instruments would have to be used. I foreshadowed this in a speech I made in Detroit at the end of November. With respect to grain, we face a much more complicated situation than simply turning off and on the sale of grain.

Senator NUNN. I agree with that.

Secretary KISSINGER. When I testified before the Senate Finance Committee and other bodies here, the criticism that was made of us was that through a program of voluntary restraints we discouraged the sale of wheat for 4 months last year, and we cannot turn it off and on every 2 or 3 months without having a massive domestic problem, which is not to say that if tensions go beyond a certain point they will not affect all other relationships.

Senator NUNN. You do not want economic sanctions from now on, do you?

Secretary KISSINGER. I do not. It is a rather blunt instrument that has to be related to a rather massive situation, and it would not have been relevant to the situation in Angola.

With respect to strategic arms limitation talks, we believe those are in our mutual interests, not exclusively in the interest of the Soviet Union. If they get interrupted, as also could happen in certain circumstances, or if they fail, then we are getting into a rather long-term problem which we should not do easily.

It was, after all, this administration that first invented the theory against rather strong opposition, and we are very conscious of it.

Senator NUNN. My time has expired. Thank you.

Chairman RIBICOFF. Senator Weicker?

Senator WEICKER. Thank you, Mr. Chairman.

Mr. Secretary, I would like to concentrate on two areas, national secrets and second, who it is that we should oversee.

I have asked this question of previous witnesses. I wonder if you could tell me in the last several months what national secrets have been leaked from a congressional committee or a standing committee, investigating committee, or some individual?

I would like to know what national secrets have been released.

Secretary KISSINGER. If I would identify them precisely, I would, of course, give them total validity, so I will have to speak in general terms.

Over the course of the past year, a number of intelligence collection methods of the most extraordinary sensitivity have been leaked. Almost all of the significant covert operations that this country has engaged in have been leaked, many of them in an extraordinarily distorted fashion and in a fashion to which the Government cannot reply without giving out more information and without claiming an overt right to do things which, if it could have claimed such a right, it would never have left to the covert operation to begin with.

On a classified basis, I would be prepared to submit—and the National Security Council is even in a better position to submit—a list of the most sensitive security leaks that have occurred during the last year, but they have been massive.

Senator WEICKER. Let me be specific. I do not sit on any of these committees, either standing or investigative.

Let me go down the list of some of the matters that have come to my attention through the newspapers, and let me see whether or not these fall into the category of national secrets that should not have been leaked.

The story of the U.S. military intervention in the war between the Kurds and the Iraqis in 1975?

Secretary KISSINGER. May I answer, before we get into this, if you read a whole list of covert operations and I comment on each one of them, I will, as Secretary of State, be in an impossible position, so if you will read the whole list, I will make a general comment and not comment on each one of them.

Senator WEICKER. Let us go through it very briefly.

The intervention in the war of the Kurds and Iraq. The intervention in Angola. The paying of bribes to Italian politicians. The overthrow of the government in Chile. The policy of assassinations.

These were all major stories in the last several months. Do you consider any one of those, or as a group, that they fall into the category of national secrets?

Secretary KISSINGER. I would say, Senator, that the way you put them already indicates some of the problems.

Intervention in the war in Angola—you use the word “intervention” and that already, with all respect——

Senator WEICKER. Participation.

Secretary KISSINGER. No. Even participation.

What did we do in Angola? We helped black African countries at their request when substantial amounts of Soviet military equipment and Cuban military forces appeared in an adjoining country, when this military equipment was of a quantity that was larger than all of the military equipment previously sent to black Africa. And we did it in order to discourage similar actions in other parts of the world.

But the Angola case has become public; has been confirmed——

Senator WEICKER. Is that a national secret?

Secretary KISSINGER. The Angola case I would put into a gray area, because I had already spoken publicly about our concern for Angola.

But, I would say that the manner in which it became public complicated its solution.

Some of the others that you mentioned, I would, of course, reject; for example, the proposition that the overthrow of the Allende government is an adequate way of describing what we were doing. But, I would say that some of the things that have been described there—and I do not want to go into the other matters; paying of bribes, for example, I think is an inaccurate description—have been extremely damaging to the national policy, yes.

Senator WEICKER. I just wonder, in light of the activity involved, this information would not be better characterized as a national scheme rather than a national secret.

I have to get back to a point that was alluded to by the chairman earlier. I think that we all understand intelligence. I do not think that there is a member of this committee who does not feel that we should have effective intelligence gathering.

No. 2, I do not think that there is any member of the committee who does not understand sources of information when it comes to names and locations of agents.

These are obviously national secrets.

Now we are talking about policies—and this will lead me into whom we should oversee. We are talking about policies that are going to be paid for in some way by the American people. I just wonder as to whether or not the matters of which you complain and the members of the administration complain are not national secrets. They do not validly fall into that category at all. They are information that should be there for judgments by the American people.

I think any one of the ones that have been discussed here, I would have just characterized them in whole or in part as a shame, not a secret.

Secretary KISSINGER. Senator, that just proves that you are in the category of those that I just described earlier who are opposed on principle to some of these actions that have been conducted in the entire post-war period.

Senator WEICKER. If you are talking about those as being against covert operations, I am not in that category. I will tell you what I insist on.

I insist on knowing the nature of those covert activities.

Secretary KISSINGER. That is what the oversight committee is supposed to do.

Senator WEICKER. Can they do it if in fact—this leads me to my second question—if in fact suggestions and conversations that have taken place between the committee and the various agencies are disregarded.

I say this because, again as I track the information coming before the American people in the last couple of months, it seems that unfortunate decisions were made by CIA agents. They did not make the unfortunate decisions. Sometimes we get lost in the shuffle. The unfortunate decisions emanated at the policy level of the National Security Council.

I wonder how effective oversight can be insofar as the CIA is concerned if indeed the decisions are being made at a totally different level and much higher.

Secretary KISSINGER. The important decisions of national policy have generally been made by the National Security Council or by one of its constituent bodies and have, to the best of my knowledge, been invariably approved by the President.

In the overwhelming majority of cases, they reflect the unanimous decisions of all of the agencies, including the CIA, but not necessarily always. The oversight obviously would have to include decisions that are taken in the National Security Council and that the intelligence agencies are asked to execute.

I agree with you that it is unfair to blame the CIA for carrying out national decisions, and I would agree with you further that the significant decisions are taken usually at a policy level with the participation of the CIA, but not necessarily with the dominant participation.

Senator WEICKER. May I have 1 additional minute by way of asking a question?

This prompts this line of questioning. I believe it leads in the case of giving money to Italian politicians, in the case of the Kurdish operation, to some extent Angola, from what I have read, all of these were opposed by the CIA.

What good will it do, insofar as any committee we set up to oversee the CIA, if, indeed, when they make recommendations they are overruled by the National Security Council?

Am I correct in my evaluation of the CIA's attitude about these three events?

Secretary KISSINGER. I will only talk about Angola, because it has been publicized.

In the case of Angola, it is emphatically untrue. The CIA recommended the operation and supported it.

In the case of other operations, without applying it now to the Kurdish or any other thing that may have been done, it is very important to distinguish what it is that has been opposed by that Agency.

For example, it is quite possible that the CIA will say in a certain case, not applying it now to the specifics that you mentioned, the CIA will say, we are in favor of this, but we do not believe it can be kept secret.

In that case, it might be technically registered that they are opposed to the covert operation because they do not believe it can be kept covert, even though they support the substance.

Then the President may well decide that if they think that this is going to be a good thing to do, he will take his chances on its becoming public, and in one of the cases that I remember, the opposition was not on substance. The opposition was on the grounds of whether it could be kept secret, and that judgment, in fact, turned out to be wrong.

The other category of disputes that can arise is not over the substance, again, but over who should administer what is being agreed to by the governmental process.

So I would say that in the cases that you gave, a more discriminating examination of the bureaucratic records would show in general that the overwhelming majority of covert operations have been supported and recommended by the CIA; but again I would like to stress, it is perfectly clear to me that any activity that is approved in the National Security Council in the intelligence field, even if in very rare cases the CIA should have a different judgment, obviously it would be subject to congressional oversight, and the Congress then would have a right to call appropriate members of the administration.

Senator WEICKER. Thank you very much, Mr. Secretary.

Just this word, as far as I am concerned. I do not think the United States has lost its capacity to act. I just think it demands that such action be both logical and constitutional. To that, I say hallelujah.

Chairman RIBICOFF. Senator Glenn?

Senator GLENN. Thank you, Mr. Chairman.

Mr. Secretary, in previous testimony before the committee, former Secretary Rusk testified that at the time that he was Secretary of State, he thought that he was aware of all the overt and covert activity that was important to his department. He now realizes that such was not the case.

What assurances do you have that you are being kept fully informed?

Secretary KISSINGER. Well, of course, it is always very hard to know what you do not know.

Senator GLENN. I asked what assurances?

Secretary KISSINGER. According to present procedure, all covert operations must be approved by the 40 Committee, on which the Department of State is represented, and therefore, I would find it inconceivable that any money could be spent for covert operations or anything of significance could be done which the Department of State, that I, as Secretary of State, would not be familiar with.

It would be a gross breach of procedures, which has never come to my attention.

Secondly, the station chiefs of the CIA are theoretically under the direction of the Ambassador. While this may not always work perfectly, I think that it works sufficiently well that I have considerable assurances that no covert operations would be conducted without my knowledge.

Now it is occasionally possible that with an existing authorization somebody will do something that I would not have recommended. But I know of no major case where that has occurred.

Senator GLENN. In prior questioning during these hearings the assassination plan was used as an example of activities that had not been approved. It appears from the testimony that the Security Council did not know about that.

Secretary KISSINGER. Of course, no assassination planning has gone on since I have come to Washington, and therefore, this is a category of issues that has not come up.

I believe that this particular compartmentalization would not be compatible with existing procedures.

Senator GLENN. When we tried to get to the bottom of this in questioning previous witnesses, it was very, very difficult, because the NSC did not know. We asked if the President knew. That was described as a "murky" area in which we could not get an answer. It would indicate that perhaps no one knew it at the top level and no one can tell us if the NSC knew or the President knew. It indicates that perhaps these decisions were being made at a very low level in CIA or some other activity that we have not yet brought under complete control.

Would you have any comment on that?

Secretary KISSINGER. I would not want to talk about particular events, but from my personal experience with the CIA, from its sociological composition and psychological makeup. I would be absolutely astonished if they did anything major without checking it out with the White House. I just do not believe that. That does not mean that I could prove in every individual case what the facts are. It just does not seem to me to be probable.

That does not mean that they had an explicit order in writing, but they must have been led to believe that certain types of activities—I would apply this also to the period that I was there—I would feel that those of us in the White House or in senior positions at the State Department have a responsibility for the basic policy guidelines.

In carrying them out, I could see in one or two cases that they thought obviously they had authorization to carry out a policy which in fact they may have gone a step or two beyond, but not the basic policy itself.

Senator GLENN. What I am driving toward, of course, is whatever oversight function we establish here has to be set up on the basis of what level we are going to oversee. Can it be just the CIA, which we can look to as one touchstone for all of our intelligence information, or does it have to be at a much lower level?

Secretary KISSINGER. I think that the committee of Congress ought to oversee the heads of the agencies and the heads of the agencies have the responsibility for getting their departments under control. What we are thinking about in these mechanisms that the President has under consideration—and it was also recommended by the Rockefeller Commission—is to strengthen greatly the Inspectors General in each of the agencies in the intelligence system, and perhaps give them a body to which they can report directly, bypassing—or together with—the heads of their agencies, so that there is an active effort to make sure that the lower levels carry out the orders.

But I do not believe that an attempt by the Congress to deal with the lower levels of agencies will have any other effect except to subvert discipline, and it will be used by soreheads rather than be an effective means of control.

Senator GLENN. That very well may be true, but it has been indicated by the testimony I mentioned earlier that a lack of information, a lack of certainty of where this information was at the Presidential or NSC level that even the executive branch has not known exactly

when these things were occurring and where decisions were being made, so it seems to me that it is a combination legislative and executive branch problem that we all have to face together.

Would you favor, to get to a specific question, a proposal made by a previous witness that we have an overall Inspector General for all intelligence activities who could be responsible in both directions?

Secretary KISSINGER. My difficulty in answering this is that the President is just now considering various proposals to deal with this precise problem, but the strength and function of the Inspector General, either through the method that you recommend or through comparable ones, is one of the important features that he has considered, and something on that line will certainly emerge in his proposals.

I think that the procedures have been greatly tightened up since the early sixties and we would certainly have no objection to regularizing them even more.

Senator GLENN. It has been most disconcerting—I will close this because my time has expired—but the difficulty here was to find out who was in charge in this area, just trying to find out what level very tremendous decisions are being made so we know what type of oversight functioning is necessary, what sort of committee or group, or what sort of staff we are going to require, just how we are going to set the whole thing up.

That is the reason I was pursuing this.

Secretary KISSINGER. I have to tell you, Senator, as these bureaucracies get larger—leaving aside intelligence agencies—it is not always easy for heads of departments to know who is in charge. One of the big problems of management in these departments—State and Defense and so forth, leaving aside CIA—become so large is to prevent the individual bureaus from simply running themselves on momentum and their perception of the instructions without bogging themselves down in endless details. That is a big problem in modern government.

Senator GLENN. It is a big problem, but the obvious next step is not, I think, to say that we just cut the intelligence community down to as few people as we can oversee. I think we all want a strong intelligence-gathering activity. I do.

We certainly want to set up the oversight function to correct the injustices and improprieties of the recent past.

Secretary KISSINGER. Among the various inspectors general-type proposals that are now being made and considered by the President, I just do not want in a public session to come down on one thing.

Senator GLENN. Thank you, Mr. Chairman.

Chairman RIBICOFF. Senator Percy?

Senator PERCY. I just have two questions. One question that I would like to ask, if it would involve a lengthy answer, can be provided for the record. At no time in our hearings have we received a full understanding of the Bureau of Intelligence and Research, which is one element of the intelligence community that does fall directly under the Secretary of State and his jurisdiction.

Could you tell us a bit about this Bureau, how useful it is, whether or not its role should somehow be changed or just left intact? It would help this particular committee.

Is it possible to do it very briefly, or would you rather do it for the record?

Secretary KISSINGER. The Bureau of Intelligence and Research in the State Department is, in terms of resources, a very tiny fraction of the intelligence community. It controls something like 2 or 3 percent of the resources. It is very small. It has very few independent resources of its own.

It has the additional problem that the Department of State, from some points of view, can be considered an intelligence collection agency, in this instance an information-collecting agency; political officers are supposed to report about political developments, which is, in a way, what the intelligence community is supposed to do.

So we have a problem: one, of using the very limited resources we have, and second, to get those people in the Department who really think they know everything already on the basis of their own information to use intelligence effectively.

On the whole, I have tried to get, and I think successfully, an increased status to the Intelligence and Research Bureau in the Department by tying them more systematically into the decisionmaking process so that the other bureaus know that the INR is going to be consulted. Therefore, they have a vested interest in working more closely with them.

Second, in trying to define what it is that INR could do more effectively, I have tried to keep them out of the day-to-day business and focus them more on making projections of the mid-term future, and of course, they have a very crucial role as liaison to the other intelligence agencies.

There is no way that the INR could duplicate what the CIA is doing, nor should it. What they should do is utilize the information that the CIA is developing, and maybe some of the military services, and then to make their projections based on the special competence of the Department of State.

And I feel, in the last 2 years, that the position of the INR has increased in terms of its influence. I do not think that we want any larger resources than we have.

Senator PERCY. Mr. Chairman, I would like to pledge on behalf of the minority that you will have 100-percent cooperation in meeting the schedule and trying to develop as thoughtful and careful a philosophy for oversight as possible, taking fully into account that it is our objective, really, to reduce the amount of time required by members of the executive branch before the Congress.

Mr. Colby testified that some 50 percent to 60 percent of his time was spent testifying or preparing for or cleaning up after congressional committees. It is an outrage. We ought to organize ourselves better than that. I almost hate to put the question to you, Mr. Secretary, how much of your time is involved on the Hill?

Secretary KISSINGER. While you are at it, would you do the same for the Secretary of State?

Senator PERCY. We will try to do that, with the one exception of the new committee.

But I would like to say, and certainly my objective on the Foreign Relations Committee is to try to reach out and help in a small way to develop what the Senator from Michigan did, Senator Vandenberg, in trying to develop a foreign policy that really allows us to speak with one voice.

We are a divided country on many things. Taking into account the separation of powers, we ought to be able to come together though.

I think that this series of hearings has helped immeasurably in working toward the reorganization of our efforts. They will help in that regard.

One thing that I would urge. The daily briefing material that has been taken away from the Foreign Relations Committee by the CIA is a disservice to us. We are going to have to ask——

Secretary KISSINGER. When did that happen? Did it happen recently?

Senator PERCY. Yes, just within a week or so.

We have had it for a long time. There has not been one single breach of confidence that I know of. As a result of it, it saves a great deal of time. It saves us from calling the Agency constantly and asking for information. It is a concise way of getting information.

I hope you can use your influence at the White House to restore it.

Secretary KISSINGER. Frankly, I did not know that that had been stopped.

Senator PERCY. Mr. Chairman, thank you very much for your consideration.

Chairman RIBICOFF. One final comment.

Toward the end, you talked about the problems that arise when a bureaucracy gets large. You can have the best policy in the world and if you cannot deliver it, it is meaningless.

As these hearings develop, what has become very apparent to me is that most of our witnesses, including Mr. Ellsworth, Mr. Colby, Mr. Helms, Mr. Kelley, and Mr. Phillips—who represent former intelligence agents—are not very far apart in their thinking from the committee's thinking. And yet, when you read in the press of how the executive branch is thinking, it in no way tracks with the way the witnesses from the administration are talking.

I know, having been in the executive branch, that what frequently happens with the Secretary or with the President, is that when their staff members come up with ideas and make statements that get frozen in, that gets to be policy. There is very seldom difficulty if a President or a Secretary sits down with Members of Congress who are trying to work out a policy. They would find themselves pretty much in agreement as to what had to be done.

I never have had any problem with you on various matters. We worked out the problems that we have had within a half hour or an hour. And, this committee in the past few years has been able to work with the executive branch and different secretaries to come to an understanding. I would hope that when you sit down with the President and those working with the President, that no one will stand on pride or a statement that someone might have made 2 or 3 weeks ago on the question of separation of powers. There is really not a problem with separation of powers here. The Congress is not trying to encroach upon the constitutional prerogatives of the Executive or the Executive on Congress.

We think pretty much alike, as I listen to the testimony. We want to achieve your objective to have fewer committees engaging in oversight and to come to an understanding of how and what comes before this oversight committee.

We are dealing with the basic problems that will affect where this country is going and eventually will hit a debate on the floor and before all of the committees. There is an opportunity here from the executive branch—I never felt any difficulty working with either a Democrat or Republican President—to help the Congress to work out a sound oversight committee and a sound oversight procedure.

Based on your testimony, Mr. Secretary, and the others in the administration, I feel there has been very little philosophical difference between myself, personally, and the witnesses. But the testimony was altogether different from what I have read in the papers as to what the Executive is thinking about. I would hope that you would bear this in mind, and that the President would bear this in mind as he comes up with his recommendation.

Again I remind you—as this committee tries to work rapidly and thoroughly—we start on the 18th. I would like to deliver a piece of legislation to the Rules Committee by March 1.

I would certainly respect the point of view of the executive branch of this Government, but we cannot fold in those thoughts and ideas if we do not get them until February 28.

Secretary KISSINGER. First of all, I want to thank you for the manner in which this hearing was conducted. I agree with you, from the questions and from the discussions you and I have had before, that the objectives of the Executive and this committee are very compatible, that we have a problem of how to work out tough problems in a co-operative way.

On the specific decision of when the President can submit his views, I will certainly carry back to him your views and my impressions of the tone and attitude of this committee and maybe I can call you after I know what the schedule is.

Chairman RUSCOFF. Please keep in mind that we break on Friday.

I think this committee has conducted these hearings almost exclusively future oriented. I am not interested in going over what the Pike committee did or what the Church committee did. Reference to the findings of those other committees was made only when it was used as an example of what we are trying to prevent in the future.

Personally, I realize that there has to be a great reorganization in the executive branch. In 10 days, it would be foolhardy for me to think that we in the Senate can reorganize the entire intelligence community. We really should not even try.

We should try to do the oversight. Much has to be done. Those other tasks will be for another day.

I think this oversight committee, once it is established, can be given a directive by the Senate that it come up with elements of reorganization of the intelligence community by July 1, 1977.

Personally I do not agree with the House that within 10 days we are going to reorganize or eliminate any element in the intelligence community. That is not our job today.

Our job is to try to put an oversight committee in place as soon as possible. It has become very apparent to me that the reputation of the intelligence community of our Nation has been so undermined and so damaged that it becomes very essential that we completely restore congressional and public confidence in our intelligence community, because we need them to operate in the type of world we are in at the present time.

The oversight committee, in my opinion, is what is needed to regain congressional confidence and public confidence in the intelligence community. That happens to be my thinking, Mr. Secretary.

Secretary KISSINGER. I agree with these objectives, Mr. Chairman. Again, I appreciate the way in which this hearing was conducted.

Chairman RUBICOFF. Thank you.

Senator NUNN and Senator Glenn?

Senator NUNN. I do not have any questions. I just have a brief comment.

I agree with everything the chairman has said. I think that he conducted the hearings in a very, very fair manner, and I believe this committee is going to be able to improve rather dramatically the status quo. I am comforted by the fact that it cannot get much worse. We only have one way to go.

And I do, Mr. Secretary, very sincerely share your expressed frustration with the tremendous amount of leaks that have gone on in Congress and in the executive branch. I hope we will be able to deal with that subject, too.

I also share your frustration with the lack of coordination now. I think, for the sake of the American people, both branches of government must make every effort to try to coordinate our foreign policy and I pledge my support towards that end.

Secretary KISSINGER. I appreciate that. We will make every effort on our side.

Chairman RUBICOFF. Senator Glenn?

Senator GLENN. I have no comments.

Chairman RUBICOFF. Thank you very much. We all wish for Mrs. Kissinger that the operation tomorrow will be most successful.

The committee will stand adjourned until 9:15 tomorrow morning.
[Whereupon, at 1:20 p.m. the committee recessed to reconvene Friday, February 6, 1976, at 9:15 a.m.]

OVERSIGHT OF U.S. GOVERNMENT INTELLIGENCE FUNCTIONS

FRIDAY, FEBRUARY 6, 1976

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The committee met, pursuant to notice, at 9:15 a.m., in room 1318, Dirksen Senate Office Building, Hon. Abraham A. Ribicoff, chairman of the committee, presiding.

Present: Senators Ribicoff, Chiles, Percy, Javits, and Brock.

Staff members present: Richard A. Wegman, chief counsel and staff director; Paul Hoff, counsel; Paul Rosenthal, assistant counsel; Marilyn A. Harris, chief clerk; and Elizabeth A. Proast, assistant chief clerk.

Chairman RIBICOFF. The committee will be in order.

We are privileged to have as our first witness today Senator Huddleston, who is a member of the Church committee. We welcome your comments, Senator.

TESTIMONY OF HON. WALTER D. HUDDLESTON, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator HUDDLESTON. Thank you very much, Mr. Chairman.

Mr. Chairman, I am pleased to appear before the committee to testify on proposed legislation to establish a new standing committee of the Senate on intelligence activities.

My service on the Senate Select Committee on Intelligence Activities has served only to reinforce my commitment to a strong and effective intelligence community, responsive to the needs of both national security and the Constitution.

That service has, however, convinced me that the Congress must take upon its shoulders a larger responsibility for overseeing the activities of the various intelligence agencies.

This, in turn, requires that the Senate be advised of the general nature and extent of intelligence matters. And, that in turn, requires that the Senate keep secrets and control itself internally.

Section 6 of the legislation introduced by certain members of the Select Committee provides that:

The Committee on Intelligence Activities of the Senate, for the purposes of accountability to the Senate, shall make regular and periodic reports to the Senate on the nature and extent of the intelligence activities of the various departments and agencies of the United States. Such committee shall promptly call to the attention of the Senate or to any other appropriate committee or committees of the Senate any matters deemed by the Committee on Intelligence to

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require the immediate attention of the Senate or such other committee or committees. In making such reports, the committee shall proceed in such manner as will protect the national security.

Within the select committee, this section, Mr. Chairman, has sometimes been referred to as the Huddleston amendment. As a result, I would like to make a few comments concerning it.

First, it is important, I believe, to note that the section is modeled on similar language pertaining to the Joint Committee on Atomic Energy, which deals with the very sensitive matter of development, use, and control of atomic energy. Section 2252 of title 42 of the U.S. Code established a Joint Committee on Atomic Energy. That section provides in pertinent part:

The [Atomic Energy] Commission shall keep the Joint Committee fully and currently informed with respect to all of the commission's activities. The Department of Defense shall keep the Joint Committee fully and currently informed with respect to all matters within the Department of Defense relating to the development, utilization, or application of atomic energy. Any Government agency shall furnish any information requested by the Joint Committee with respect to the activities or responsibilities of that agency in the field of atomic energy.

The part of the Atomic Energy Act funnels the information to the committee. Perhaps more important for our purposes, however, is a latter portion of that same section which provides that:

The Members of the Joint Committee who are Members of the Senate shall from time to time report to the Senate * * *

Second: I think it is important to note that my amendment does not envision a wholesale release of classified or sensitive information. The section itself directs that national security be protected. It does not contemplate the naming of agents, the revealing of specific details of ongoing operations, which can only lead to undesirable results. Instead, it refers to reports on the "nature and extent" of intelligence activities. Thus, it does contemplate the provision of general information on the total range of activities to all Senators. For those instances where classified materials might be involved, section 6 should read in conjunction with section 10.

Perhaps the Angolan situation best illustrates the need for section 6. Some time ago, the select committee learned of the U.S. interest in Angola. We, of course, as we did throughout our investigation, kept this information in the strictest of confidence, even to the point of not informing our fellow Senators. As the situation developed and information came from other sources, I saw conclusions being drawn on the basis of partial information and became increasingly aware of the real need of the Senate to know what was transpiring in Angola. Certainly, the U.S. Senate could have been provided more complete information on the situation—without naming contacts, sources of information, et cetera.

Third: I think it is important to note that the reporting provision should not be read in a vacuum. Instead, section 6 must be read in conjunction with sections 7, 9, and 10, which involve the disclosure of information. Section 10, for example, seeks to create a process for the release of information, which the President and other specified members of the executive branch have objected to having disclosed. I believe your committee will want to examine this proposed process closely and perhaps strengthen it. And, for my own part, I would like to see section 6 operate in conjunction with some type of sanctions for

those who fail to honor and respect the responsibility which knowledge of sensitive matters of national security carries with it.

Certainly, it is reasonable to ask, "How will Congress act once it has received sensitive information?" I am deeply concerned about this issue. Indeed, it shares equally in importance with my desire to see the Senate fully informed so that it may intelligently decide questions of grave national importance. As one commentator so aptly put it recently, if Congress is to be taken seriously in exercising its oversight function, then it will have to devise ways of securing information and for the orderly declassification and disclosure of information.

I firmly believe that the task of dignifying and solemnizing this process falls squarely upon the shoulders of the Senate and that it must not flinch from this responsibility.

Recently, I have at times had the feeling that we were all riding a "runaway horse"—with information galloping forth and no one able to pull in the reins. That must be eliminated and replaced with understanding and acceptance of the fact that some secrets have to be just that—secrets.

That is why I urge that the Senate consider the section 6 reporting provision in conjunction with its consideration of provisions dealing with disclosure. Such provisions are designed not only to accord more sanctity to the process of disclosure but also to delineate a method for dealing with this complex issue. I personally believe that once individual Senators become exposed to the problems of intelligence that the full burden of responsibility will be felt and appreciated. But, that cannot be left to chance or hope or to wishful thinking.

Consequently, I believe it is incumbent upon the Senate to develop the internal sanctions it deems appropriate for unauthorized disclosure by its Members.

Whether these should be fines, denial of access to classified materials, automatic expulsion from an intelligence committee should the person be a member, censure or even expulsion are matters of such grave import that they should receive the most studied and thoughtful consideration by the Senate. But, whatever the specifics decided upon, I believe it is imperative that the Senate adopt some standard which it believes in and will enforce with wisdom.

During most of the select committee's deliberations on proposed legislation, the draft contained the following provision regarding sanctions for Members who fail to comply with secrecy requirements:

No Member of the Senate and no member of the staff of the Senate shall disclose outside the Senate any information conveyed to the Senate in closed session or otherwise made available to Members of the Senate in confidence by the Committee on Intelligence Activities, unless authorized by the Senate.

The Committee on Intelligence Activities of the Senate shall refer to the Select Committee on Standards and Conduct of the Senate for investigation and other action (1) any disclosure outside the Committee on Intelligence Activities of the Senate, not authorized by such committee, of any information in the possession of or obtained by such committee relating to the activities of the Central Intelligence Agency or any other department or agency of the United States engaged in intelligence activities, or otherwise held in confidence by such committee; and (2) any disclosure outside the Senate, not authorized by the Senate, of any information conveyed to the Senate in closed session or otherwise made available to Members of the Senate in confidence by the Committee on Intelligence Activities. The Select Committee on Standards and Conduct shall investigate any breach of confidentiality referred to it pursuant to this subsection and shall recommend appropriate action, such as censure, or removal from office.

I regret that this language was dropped from S. 2893 as introduced, and I am recommending comparable language be included in any bill reported to the full Senate. With the committee's permission, I will in the next few days offer some specific suggestions regarding the original language as well as some recommendations on my own, which will include a broader range of sanctions. If comparable language is not added within committee, it is my intention at this time to offer such language as an amendment when the bill reaches the floor. If we are serious about being responsible, we will impose on ourselves sanctions sufficient to guarantee that responsibility.

In addition, it is my intention to offer separate legislation which will provide criminal penalties for ex-employees of the intelligence agencies and the proposed intelligence committee who reveal classified information subsequent to their employment by the agency or committee.

As you know, employees of intelligence agencies are now sworn to secrecy through an employment contract. I do not believe this contractual arrangement is sufficient, as evidenced by the unhappy episodes of late in which employees have revealed the names of the present CIA undercover agents. I would like to strengthen the bond of secrecy by providing criminal penalties for such unauthorized revelations of national security information.

The experiences of recent years, Mr. Chairman, have taught us that our institutions are strong and worthy of the confidence of the people. During this period, conflicts on policy issues have often taken the form of attacks on individual institutions. Many have been unmercifully buffeted. Yet, they have borne well the brunt of each sally. What is desperately needed now is a method of conciliation and mediation which could turn the focus away from these entities themselves and on to the issues involved. If we in the Senate wish to enter a new era of sharing the burden in the foreign policy arena, part of our task is to show the American people by both word and deed that we understand the role we wish to fulfill and that we take our responsibility with the profound seriousness it demands. That will require knowledge, and it will require an appreciation for the manner in which that knowledge must be used.

Chairman RUBINOFF. Thank you very much, Senator Huddleston, for your valuable contribution.

As chairman, I would be most appreciative if your suggestion legislation or amendments would be submitted to the committee for our examination.

It is our intention to start marking up this bill on the 18th, 2 days after we return, and I am very sympathetic with some of your suggestions.

Senator HUDDLESTON. We will have it by that date, Mr. Chairman, and make it available to the committee.

Chairman RUBINOFF. Thank you very much.

The committee will stand in recess until 9:30.

(Whereupon, the committee took a brief recess.)

Chairman RUBINOFF. The committee will be in order.

Thank you very much, Mr. Attorney General, for being with us.

I would like your indulgence to change our order somewhat. I am required, as chairman of the Government Operations Committee, to

appear at 10 o'clock before the Rules Committee for the approval of this committee's operating budget for the next year.

So, I would like the privilege of asking a few questions first.

I understand that you have to leave at 11 or a few minutes after 11 o'clock for another important engagement. We understand that.

I am hopeful that while I am at the Rules Committee Senator Brock or other Senators can be here—

Senator Brock. I am supposed to be elsewhere, too.

Chairman RUBINOFF. Well, Senator Percy or Senator Weicker will be here, so let's get started.

Before you read your statement, could I ask a few questions?

TESTIMONY OF EDWARD H. LEVI, ATTORNEY GENERAL OF THE UNITED STATES

Chairman RUBINOFF. Yesterday, Senator Church urged the appointment of a new special prosecutor to investigate past activities of the CIA and FBI and to prosecute officials who broke the law.

Do you have any comment on Senator Church's proposal?

Attorney General LEVI. Well, I suppose the covering comment is, as I think Senator Church indicated in the newspaper this morning, that I don't agree with him.

I would be glad to say why I don't.

Chairman RUBINOFF. Yes; I would like that because the first I knew about the proposal was reading it in the newspaper this morning. I think it is important because it is a vital role.

Do you think that the Justice Department can act impartially on these matters? I would like to have your comment because it is important, it is on the front page of all the papers.

Attorney General LEVI. I don't have the slightest doubt that the Department of Justice can act and is acting impartially on these matters and, as a matter of fact, Senator Church's statement went somewhat beyond that point into a different point.

It was really to the effect that, I think, whether the Department of Justice could or could not act impartially and effectively, it might not appear that way to the public.

Now, that means, then, that whenever one raises suspicions concerning activities of Government employees—and Senator Church's statement was not just about the Department of Justice employees but employees in other parts of the Government—then the ordinary law-enforcement mechanism cannot be trusted to take care of that.

I think that is a most debilitating and destructive view of the Department of Justice and of Government.

I understand that when an emergency situation arises, as it did in Watergate, and as it may from time to time, a special prosecutor may be necessary. To take the position that really it is an ongoing matter, that a Department is so biased and so incapable of enforcement of the law within the Government that one must have a special prosecutor running along side, strikes me as an attack on the integrity of the Department, and if I believed that, frankly, I would just quit because there really would be no purpose in my being here.

Chairman RUBINOFF. In other words, you reject Senator Church's suggestion completely?

Attorney General LEVI. I reject it for the events about which he is talking.

Now, if there is some kind of emergency problem which arises—and I don't know what would it be—I recognize that one can have a special prosecutor.

Furthermore, at any time that I thought it was required under the present setup, we could bring in a special prosecutor. In fact, we have a special prosecutor in place right now who is operating on matters assigned to him, and lawyers can be brought in from outside to handle particular cases if that's necessary.

That has not been the problem. I might say that one problem which Senator Church I know is aware of, is that we have not been able to get from the Church committee materials which they gathered and which we really must have with respect to these investigations.

Chairman RIBICOFF. In other words, Senator Church has never turned over to you the material that you—

Attorney General LEVI. Some material has been turned over, a great deal as yet has not been, and as anyone would understand, this is extremely important, both for fairness to putative defendants as well as in preparation of the case.

Chairman RIBICOFF. In other words, you look at Senator Church's suggestions as a reflection on your own integrity?

Attorney General LEVI. I don't think it is intended that way.

Chairman RIBICOFF. But the result would be?

Attorney General LEVI. I don't know about that. I would say if I believed that, I would ask myself, "Why am I here?" Since there are other places to be, that would be a good question.

Chairman RIBICOFF. Do you support the creation of a new intelligence oversight committee this year?

Attorney General LEVI. Well, I would support it. There are problems which I have tried to discuss in my statement.

There are problems about the giving of information to it. There are problems about the disclosure of information by it. There are particular problems with respect to the Department of Justice or the FBI.

I am sorry that there are those problems, particularly with the latter, but I think they exist and how that should be handled, I am not sure.

I don't think that the FBI's activities should be split as it is suggested. So, if they are not split and if they are kept together, then the question is which committee should have oversight over the FBI.

I think it is very important not to segment the FBI.

Chairman RIBICOFF. Even though you have counterintelligence activities in the FBI, it would be your feeling that they should not be within the oversight committee's jurisdiction with the other intelligence activities of the other agencies?

Attorney General LEVI. I think counterintelligence, domestic security investigations, are law enforcement directed and that it is a peril to our country to think of them in any different light.

It is very important to see the relationship between these investigations and law enforcement and very important for the Bureau to see it that way and to always be reminded of it.

That's why I think it is dangerous to compartmentalize and split off the activity.

Now, that doesn't mean, assuming an oversight committee on intelligence, that it couldn't look at various parts of the FBI's activities, but I don't think it should be a primary oversight committee on the FBI unless it has the whole thing.

If it has the whole thing, then it is dealing with law enforcement activity or it never should be in the Department of Justice. I don't think that's possible. So, that is a problem.

I don't know how it gets settled.

Chairman RIBICOFF. Mr. Attorney General, the committee starts marking up this legislation on the 18th. Could we expect the position of the Justice Department on the Church bill before we start marking this legislation up?

Attorney General LEVI. Well, we will get you our position. I just hope the position will be helpful.

I think there is a problem.

Chairman RIBICOFF. Yes, we know there are problems and we are very anxious to get every point of view and we want the point of view of the CIA and the State Department and the Attorney General and your analysis and your feelings.

Obviously, you feel very strongly on it and I think we would respect your thinking.

Attorney General LEVI. We will get it to you.

Chairman RIBICOFF. Let me ask you: Do you think, under present law, the CIA's present authority to conduct covert operations abroad is clear?

Attorney General LEVI. I think the authority is probably clear enough. That doesn't mean it couldn't be made clearer. I think past actions of the Congress and the constitutional powers of the President together probably are sufficient—I don't know if the word should be "clear."

Chairman RIBICOFF. Would you again want to make suggestions by the 18th to clarify this? Or, will you not be ready for it by then?

I would rather have a candid answer on this because I recognize that there will be features of the intelligence problem that I don't believe that we can really address ourselves to in the period between now and March 1.

Yet they require study and they require amplification. I would rather have your frank opinion, Mr. Attorney General, and not make any commitment that you can't keep.

Attorney General LEVI. Well, perhaps the commitment should be that we will do our best. There are, of course, problems in giving that kind of an opinion, anyway, so we will have to see if we can do that.

Chairman RIBICOFF. Now, the Atomic Energy Act requires certain Government agencies to keep the Joint Atomic Energy Committee fully and currently informed on atomic energy matters.

Do you see any constitutional problems with the way such a provision has been generally interpreted by agencies and the committee?

Senator Baker, who is a member of the Joint Atomic Energy Committee, said the other day that under the fully and currently informed language the committee has been consulted in advance regarding some of the most sensitive of undertakings by the agencies.

Do you object, as a constitutional matter, with this particular interpretation of the term "fully and currently informed"?

Attorney General LEVI. I think the problem is perhaps less with the language than with the way it is interpreted and what it is thought to require.

I think there is a constitutional problem if to keep fully informed means that every act taken has to be passed on ahead of time by a congressional committee.

Now, it isn't inevitable that that be the kind of interpretation, and it isn't inevitable that that be a requirement. It could be more of an accommodation and mutual working.

There is a constitutional problem if the congressional committee regards itself as being the manager of the operation. If the purpose of the disclosure of the information ahead of time is really part of the management process.

Then the congressional committee has really become an executive.

Chairman RUBINOFF. Under our constitutional system, Congress has the responsibility for exercising oversight of the activities of the executive branch.

Now, the ability of Congress to meet this responsibility would be undermined if the executive branch has a final say over what information the committee can disclose.

On the other hand, the executive branch asserts a constitutional role of its own in classifying and declassifying information.

Do you feel that there are important constitutional interests involved on both sides of the issue wherever Congress seeks to release information labeled "confidential" by the executive branch?

Attorney General LEVI. Well, there are important constitutional issues involved. It is perhaps more complicated than just to say wherever there is a label of confidentiality on a document.

I don't think that whether Congress can declassify—which I think Congress cannot do—is the same thing as whether Congress can disclose, which in fact at times it has done.

So, it is a complicated constitutional matter.

I would like to go back to a point to make what you might find a more alarming statement.

I don't find in the Constitution any provision which says that Congress has oversight functions over the operations of the executive. There is no such provision.

There is a provision that it has the necessary powers to carry out its functions and, therefore, one has to ask what are the congressional functions.

The congressional functions are to appropriate and to pass laws and certainly for that purpose it needs to know a great deal about how the laws are being administered and their effect.

But I do not find in the Constitution, whether it should be there or not, the power of Congress to supervise the executive branch.

I do not believe that one would find it either in the writings of the Founding Fathers.

So, there are constitutional problems when one has a separation of powers which one does have here, and a necessity for confidentiality.

Chairman RUBINOFF. In chatting with Secretary Kissinger yesterday, I suggested to him—and I suggest to you, too—we are going to have to enter into a trial marriage here between the President and Congress.

Now, we are really in a thorny thicket here. There is a problem, as Secretary Kissinger states, which is uppermost in his mind, and that is: How do Congress and the Executive work together in the field of foreign policy? I agree with him on that. We are at an impasse and it isn't good for the country to have the quarrels and deep divisions on important matters between the President and the Secretary of State on one hand and the Congress on the other hand.

Again, I am only speaking for myself and I can't commit the other members of the committee, but it would seem to me that it is going to behoove us to try to set this committee up and maybe deliberately keep certain elements fuzzy.

There ought to be this trial period over the next 9 months or so in which the Congress and the President are going to have to accommodate themselves to one another.

My thinking is that on many of these issues, with a proper directive to the Oversight Committee, they could come back to the Senate on July 1, 1977 with suggestions on problems that we now see only dimly developed. To make this really work without having a confrontation with one another, it is going to be absolutely essential that there be mutual trust, mutual understanding, and mutual accommodation.

I am going to leave now to go to the Rules Committee, but I will come back.

Senator Percy has some questions. I know he has to go to the Rules Committee, too, and Senator Brock, also.

I hope Senator Weicker will come, but I hope we can accommodate ourselves for the Attorney General.

Your point of view is very important and I regret that we find ourselves in this situation because there are important questions that I would like to ask.

So, Senator Percy, would you chair, and would you excuse me. I will return later.

Senator PERCY [presiding]. I thank the Attorney General. I think you are fortunate in that both of us are going to have to leave.

I will not be able to come back, but in 10 minutes I hope I can finish up my questions.

Attorney General LEVI. I am not sure in which part of that my good fortune lies.

Senator PERCY. Well, I do apologize, though, because in looking quickly over your paper this morning I think you have really done a great service to this committee and the Congress in thoroughly researching what you describe as very delicate lines of questions. Ever since our previous conversation on the oversight duties and responsibilities and authority of Congress, I have done a little research on it to be absolutely certain that as we proceed we are proceeding in accordance with the clearest provisions of the Constitution.

I certainly will be most concerned, as you evidence on the bottom of page 3—on the question of how far a committee can go in monitoring intelligence operations for legitimate legislative purpose before the tendency develops to attempt to manage them.

I had previously come to the conclusions in these hearings and put questions to virtually all witnesses to corroborate my feelings that we should not become the executive branch of Government.

If we became part and parcel of every major decision made in the intelligence field involving covert operations, we would have no right to exercise oversight. We wouldn't be able to do it because we are part of that decision.

First of all, do you concur with that, that there should not be prior approval as long as the operation is within general guidelines of policy and as long as it is certainly not contrary to law. Do you think that there should not necessarily be prior approval by Congress of every activity undertaken by an intelligence agency?

Attorney General LEVI. I don't think that should be a requirement.

Senator PERCY. Former Attorney General Katzenbach has suggested that it might be a good procedure to require the CIA and other intelligence agencies to commit to writing, in classified form, plans for a major covert operation, to write it down and make it a matter of record so that it could be reviewed subsequently if there was a need for that.

There might be a tendency, once an operation is committed to writing and its purpose put down, along with the various range of alternatives and options, to not engage in some of the things that we might loosely go ahead with if it were all done verbally and informally.

Is this a suggestion worthy of our consideration and the consideration of the executive branch?

Attorney General LEVI. I think so. I don't want to dissemble; I have no particular experience in or insight into that kind of covert activity, but Mr. Katzenbach, I assume, as Under Secretary of State, perhaps knew more about them.

I would assume that a requirement of that kind has to be carefully looked at because my guess would be that the writing down could not always be as detailed as one might wish and as one might think it could have been after the fact.

I have not seen such a plan in operation, so I just don't know.

Senator PERCY. I would like to send you his testimony on that particular point. If you could give us your analysis of that suggestion, we would appreciate it, because it is a very concrete suggestion and seems to be, on the surface at least, a worthy effort to try to find a way to minimize the excesses in this field.

I intend to send copies of your testimony to members of the Foreign Relations Committee and the Armed Services Committee because on the floor today we have a military assistance bill that I think comes dangerously close to the area of assuming the responsibilities and duties and functions of the executive branch of Government.

The Senate yesterday accepted four amendments I put in to remove the legislative branch from executive branch operations.

There is a terrible tendency to overreact in Congress with things that will take us away from legislative objectives and get us into managing things, which would be a horrendous result.

Mr. Katzenbach testified that he did not really know a lot of things being carried on by the FBI that he feels now he should have known, that there was a lack of communication there.

I believe the best oversight possible of any of these operations should really begin with the executive branch itself, in sensitive security matters. The National Security Council we know has not exercised the oversight it should.

Certainly, when Dean Rusk said he was unaware and shocked to find out certain things had been carried on involving foreign policy when he was Secretary of State that he did not know about, there has not been sufficient oversight there.

I am interested in your relationships now with the FBI. Could you describe your relationship with the FBI and with the Director, Mr. Kelley? He said in testimony that he welcomed your guidance, counsel, cooperation, and availability.

For the record, could you tell us whether you have found a way that the Attorney General and Director of the FBI can have satisfactory relationships so that there is oversight over the FBI within the executive branch of government as we assumed all along there has been but suspected there probably wasn't?

Attorney General LEVI. Well, I would describe the last year's relationship as a learning process, one in which the Department and my office have become much more acquainted with the operations of the Bureau and the Bureau has, I am sure, come to realize much more that the concerns we have are the kinds of procedures that ought to be followed and that really is a search for the kind of thing which you were talking about before, namely, where we should have prior notification; where the Director ought to have notification on what is done in the field; where our authorization is required.

So, for the last 10 months at least the Department, through a committee on which the FBI is represented, has been drawing up detailed guidelines for the Bureau.

That is why I called it a learning process because in the course of doing that a variety of activities has surfaced and has been examined and then an attempt made to determine whether these activities are the kinds of things that the Department should be notified about should give specific approval on and what is the standard, and so on.

While these guidelines are taking much longer than I ever thought they would—and I regret that—I think they have formed the basis for a much better understanding.

My view is that the relationship—I think this must be right—between the Director of the Bureau and the Attorney General and the Department on the other side, the relationship between those two segments is now closer than it has even been since probably the Stone period.

That doesn't mean that I know everything that is going on in the Bureau, and I hope he won't mind my saying so, but I wouldn't assume that Director Kelley knew everything, either. He knows a lot more than I do, and he should.

So, it is, as you have put it, a kind of oversight function which means you don't know everything. One has to know and have confidence that one knows the important things.

As time goes on, one perhaps gets greater confidence that that, confidence might turn out to be misplaced, but I hope not.

Senator PERCY. When will the new guidelines that have taken longer than you thought they would, be ready? What is the target date for them?

Attorney General LEVI. Well, the target date is many months ago.

Senator PERCY. What is the new target date?

Attorney General LEVI. Senator Percy, I wish I knew. I refused to accept the target date that was given to me by the committee the last time I met with them, which was the first of next year.

I find that much too long a time to wait, and I hope that within the next few months that we will be ready.

Senator PERCY. Could we try to aim for a June 30 target date?

Is that too short a period, in your judgment, or does that give you sufficient time?

Attorney General LEVI. I would shoot for a shorter date, knowing that one never hits these shorter dates anyway. But, I think one has to shoot for the shorter date.

For one thing, these guidelines are tentative. We have tried to make them available in various ways to chairmen of congressional committees and to other committees.

They require discussion, consultation; there is a question as to whether some parts shouldn't be, as I would hope, enacted into legislation; other parts into Executive orders and rules.

The sooner the better, and I don't even want to wait until June.

Senator PERCY. I believe it would have been very helpful to us in working on this legislation. We are going to report this bill out on March 1. We are doing so at the urgent request of the executive branch.

It would help us immensely if we could have known how much oversight we could have expected inside the executive branch.

If we could have gone over those guidelines it might have made unnecessary some of the things we might have to do. So, there is a sense of urgency about it.

We are not assuming that this bill is going to sail through. There are going to be a lot of toes stepped on if we are going to cut down the number of oversight committees to one or two. There are going to be a lot of bodies around here and that's not going to be done early, but the sooner we can get those guidelines, the sooner we can really know intelligently how much we should be doing at the congressional end.

It would help a great deal.

I would like to ask another question on the dissemination of sensitive information. In quickly going through your testimony, and I am sorry it was not available last night for me to study, have you suggested a joint committee for congressional intelligence oversight?

Do you support particularly a joint committee of the House and Senate?

Attorney General LEVI. I really didn't face up to that question because I wasn't sure whether it at all was possible. I think a joint committee would be better but I have some hesitation in telling Congress how it should arrange itself and that hesitancy is made more genuine because I think it is an extremely difficult problem and I don't know whether a joint committee is possible.

Senator PERCY. What we are attempting to accomplish is to focus attention and responsibility on a smaller number of people. We are trying to really cut down our proliferation so it cuts down the amount of time that the executive branch must continually be on the Hill testifying.

It is a terrible waste of time to give duplicate testimony before six or eight committees of the Congress. Mr. Colby said he spent 50 to 60

percent of his time in the past 3 years on the Hill or preparing to come up on the Hill or cleaning up after he had been on the Hill. That is a terrible waste of time.

If we cannot come together with the House—and there is an indication the House wants to have its own committee—we cannot impose a joint committee on them.

That would mean we would have to have our own. Could we cut down on the number of people involved if we could find a way to combine the authorization and appropriation function in the same committee? We have a budget committee anyway looking at the overall budget.

Would that help reduce the number of people and help establish a sense of confidence that information given in confidence to a congressional committee would have less likelihood of leakage because of the lower number of people involved?

Attorney General LEVI. Well, I suppose it would. Again, I don't know whether that is realistic and I am in a peculiar position because of the point that I have had to make in testimony about the FBI, that is, the relationship of its intelligence functions to an intelligence committee's oversight is particularly complicated unless all of its activities are looked at there, and my guess is that all of its activities are better looked at in a law enforcement frame, so that agreeing with what you have said, I then have to say that the subject matter of my particular concern with respect to the FBI is that it doesn't fit so well into the proposed committee.

I am worried about the compartmentalization of the Bureau into law enforcement and intelligence for the reason that I stated earlier, that the law enforcement goal, it seems to me, has to always be kept in front of the FBI and it has to be viewed that way.

Senator PERCY. It might be well to put on the record your feelings about whether the intelligence functions of the FBI should be included under the jurisdiction of the new oversight committee, which would also have oversight over the agencies dealing with foreign intelligence.

Attorney General LEVI. What I have said is that my view is that the various intelligence activities of the FBI are closely interrelated one with the other and that all are interrelated in one way or another with law enforcement. There is some aspect of the Bureau's work which is in implementation of proposals, policies which come from other agencies, which are in the intelligence field, those matters would undoubtedly come before an intelligence oversight committee.

The basic oversight of the Bureau, it seems to me, ought to be over the whole Bureau and ought not to be compartmentalized into intelligence on the one hand, and then law enforcement on the other.

The intelligence work of the Bureau must be regarded as primarily essentially connected with law enforcement and, therefore, it is in a different posture than the other intelligence operations that this committee would be working on.

Senator PERCY. Could you specifically comment, then, on whether FBI counterintelligence or domestic intelligence should be included?

Attorney General LEVI. Counterintelligence is related to the enforcement of the statutes against espionage; it is related to the enforcement of other statutes, and any counterintelligence investigation can move quickly to other criminal investigations; one moves back and

forth. It is law-enforcement connected, and if it isn't law-enforcement connected, then there is a problem of what the limitation and restrictions are and what the jurisdiction of the Bureau might be.

So, that, of course, this is a problem with our approaching it in guidelines, but my belief is that the greater security for the country and the greater well-being for the Bureau and the more efficient performance of its functions, including the intelligence functions, is seeing the Bureau first, as a whole and, second, with the nexus to law enforcement, or the nexus to preventing or detecting violations of laws.

Senator PERCY. It has been testified to in this room that the National Security Council, because of its structure, really does not exercise the presumed kind of oversight within the executive branch over major operations that it should and that that oversight ought to be strengthened.

There are only four statutory members, I believe: the President, Vice President, Secretary of State, and Secretary of Defense.

The suggestion has been made that if a few additional Cabinet officials were made statutory members of the National Security Council that they might feel it is necessary to assume a greater sense of responsibility to the National Security Council and to those responsibilities in competition with all the other things they are doing.

Could you comment as an individual, because I am sure there is not an administration position developed, on the idea of having the Attorney General, because intelligence activities do exist in the Department of Justice, being a member of the National Security Council?

Attorney General LEVI. I would say more generally that I think it is important for the Attorney General to be informed or aware of those kinds of decisions which might raise major legal questions, particularly when they involve fourth amendment rights and comparable problems.

As to the precise mechanism for that, and whether it should be as an observer or member of a particular committee, I really don't know.

I do think there is an analogy to the point which you were making somewhat earlier, Senator Percy, that the Attorney General's participation in a sense ought to be of a kind that he can be quite objective in terms of his reaction to what is being proposed and so some presence and some distance are both required.

Senator PERCY. Well, we would try to insulate him to the degree that we can from political pressures. As you know, I have long felt that that job of Attorney General should be just as insulated from political pressures as the Secretary of State and the Secretary of Defense.

I would like to ask you just two more questions.

Without the guidelines—which will be thrashed out for some time—do you today, in your personal relationship with Mr. Kelley, feel that you do have and are exercising adequate oversight over the FBI? Are you confident that the FBI is not carrying on any activities that you would ever subsequently be surprised by their having been carried on? Do you have an understanding with Mr. Kelley on matters you should be apprised of as Attorney General?

Attorney General LEVI. Well, I hope so, and we worked very hard on achieving what I think is an understanding. We meet frequently.

I am quite certain that if a matter were not raised with me, it would be because it was not regarded by Director Kelley as important or particularly sensitive.

The communication has improved, as I said—the reason I described the relationship as a learning process is not because of my former university associations but rather as Mr. Katzenbach once suggested, the Bureau's habit is to send lots of communications to the Attorney General and he described that.

I think he also described that many of them were not read. The problem is to make sure that they are read and that a paragraph which suggests something which might seem slightly unusual but perhaps not greatly out of the ordinary is immediately asked about to find out what that means and as we do that we do find out a great deal and I believe we have moved along to a much better understanding both of our concerns and their concerns.

Senator PERCY. Well, my last question deals with a specific matter of legislative oversight. There is a proposal that Law Enforcement Assistance Administration be reauthorized for another 5 years.

I noticed that there was a cut in the budget by the executive branch in the 1977 budget, and I have also noticed that there have been no oversight hearings of LEAA. There have been a few GAO reports, but there has been, really, no congressional attention given to those GAO reports.

There have been a number of controversies in LEAA as to what is a wise use of money. There might be information that could be testified to as to where money has been wisely used. There have also been allegations that there has been money used for illegal activities by certain police forces in intelligence and so forth, using LEAA funds.

Would you feel that this is an area, before we go ahead and just authorize 5 more years, that the Congress should take a look at with the cooperation of the executive branch to better understand now, where this multimillion dollar program is going—where it has been and how it can be improved and made more effective and efficient?

Again, I want to do it—if we did it in this committee, as I have proposed—in complete cooperation with the executive branch of Government with a common purpose in mind to see that these funds are as effectively used as possible.

Attorney General LEVI. Well, Senator, I have testified that I think the LEAA should be reauthorized and I did not suggest that there would have to be another study before one could make that kind of a judgment.

I also said that I would hope that Congress would change the statute dealing with LEAA to give the Attorney General greater oversight functions and powers.

I asked specifically that the Attorney General be authorized to set priorities and that there be an advisory committee.

I think the question of whether funds can be given to State councils for law enforcement purposes and be well used, which is really the kind of basic program of LEAA, and then there is its discretionary grant program where I think it needs an advisory group, is the kind of question which one doesn't answer in a few months before deciding whether to reauthorize, but rather it should be the kind of inquiry that ought to accompany the further work of LEAA.

This is a form of revenue sharing directed toward law enforcement. It has helped to professionalize the enforcement of law, which I think was desirable, and I have no doubt it can be improved.

It is the kind of thing which hasn't been in operation long enough to make a final judgment on, but it was on the basis of this that I thought it should not be reorganized but that we ought to have better ways of watching it.

Senator PERCY. Mr. Attorney General, I have been urgently called to get over to testify with Senator Ribicoff before the Senate Rules Committee.

I will turn the Chair over to Senator Chiles and, Senator Chiles, you can either proceed as you see fit with questioning, or the Attorney General can read his statement.

Senator Ribicoff will be back just as quickly as he can from the Rules Committee, which I would imagine would be in 5 or 10 minutes.

The Attorney General might proceed with the reading of his statement until the chairman returns.

Senator CHILES [presiding]. Mr. Attorney General, we would like to have you proceed the way you wish.

Attorney General LEVI. The fact is that the statement can be included, I assume, without my reading it.

Senator CHILES. It will be included in full in the record at the conclusion of your testimony.

Attorney General LEVI. I have no great desire to listen to those magic words again, so I would be glad to answer any questions you may have.

Senator CHILES. Several of the things we are seeking in determining how to shape legislation is whether we should be dealing with a joint committee, whether we should be dealing with separate committees, and what the authority of those committees should be.

Maybe you have covered this in your statement, but I have not had a chance to read that as yet.

I wonder if you would give us a little of your opinion as to what the jurisdiction of the committee should be, and how you would see the process working.

Attorney General LEVI. Well, I don't believe that the statement discusses the joint committee problem particularly, in part because I don't know whether that is feasible. I do in the statement, and I have done so outside the statement, make the point that, first, I do think it is desirable to have oversight over intelligence activities.

Second, it is desirable to cut down the number of committees if one can do it, both for the purpose of having better oversight and also because there is a certain deficiency on both sides, if that is possible.

It would be a matter of particular concern to me if the intelligence function—for the purpose of this oversight—were defined to include the activities of the Federal Bureau of Investigation, in part because my view is that the intelligence functions of the Federal Bureau of Investigation are so closely related that it is hard, and incorrect, to pick out one kind of intelligence function from another and that the intelligence functions of the Bureau are essentially related to law enforcement functions.

This really distinguishes the FBI from the other governmental intelligence agencies.

I think it is wrong from the public policy point of view to compartmentalize the Bureau and have one committee have oversight functions in an intensive and genuine and strenuous sense over one part of its intelligence functions, because I think that would just segment the Bureau and have a bad effect on intelligence functions and also a bad effect on the purpose of the Bureau which really must have this very close nexus to detection of Federal criminal law violations.

My belief is that there is a problem there and that the Bureau as a whole ought to be before a committee which has oversight functions over it and probably over the Department of Justice and that if there is a joint committee, one committee on intelligence, while it may be able to get information and should be able to get information about the Bureau with respect to certain matters, it cannot truly be the oversight committee for the Bureau.

This is a problem, and I tried to lay it out in my statement. It is a problem not because it is a matter of convenience, but because I think it goes to really the heart of the purpose of the FBI and the way one does go about making sure that that purpose is served.

Senator CHILES. That problem would be magnified, would it not, if the intelligence oversight committee also had authorization jurisdiction?

Attorney General LEVI. It certainly would, it certainly would be.

Senator CHILES. In regard to the FBI.

What role do you think the Justice Department can play in the future in making sure all Government officials—including all of the intelligence agencies—obey the law?

Attorney General LEVI. Well, I don't think the Department of Justice can be or should be the inspector general for all Government agencies if that means monitoring and policing all standards of conduct within those agencies.

I think, inevitably, one has to have them in other agencies as we do within the Department itself. We have to have ways of looking at conduct to detect conduct which is inappropriate and correct it, and it may not rise to the level of a criminal law matter.

There is a danger if all governmental conduct is to be treated solely under the criminal law. This becomes a peculiar kind of management.

I certainly would hope that we can become aware of violations of the law and that the Department will effectively perform its duty, and I am sure it will.

Senator CHILES. The revelations now about illegal or improper activities by the intelligence agencies came to us after we have gone through the Vietnam war and the Watergate crisis.

As chief law enforcement officer or the chief law enforcer of our country, what do you think all of these things are doing to the fabric of our respect for law and order and our respect for people?

Attorney General LEVI. Well, the disclosure to which you refer relates to conduct which goes back more than a generation.

It goes back sometimes to conduct 20 years ago or more. It is hard to comment on conduct that took place that long ago, what effect it has on the quality of life in our society.

Obviously, the revelations of improper activity or the re-revelations do have an effect, but one could argue that the effect is both terrifying

and therapeutic, and I suppose it is both. The disclosures serve as reminders of things to be avoided or thought about.

The conduct, though, I think—and I have to make this point—has been revealed before in many instances, and it is partly a question of how you reveal it, in what context you put it in.

It is amazing to me how often one can tell the same story and get the same excitement out of it.

Senator CHILES. I am sure that's true. What can we do to restore that respect now?

Attorney General LEVI. I think one has to deal with these problems with as much candor and straightforwardness as possible.

That is what we are trying to do.

These matters, those that occurred many years ago, have been investigated by congressional committees, they have been stated to congressional committees. With regard to many instances, persons who performed are no longer living.

Moreover, a statute of limitations would have run if one is thinking of the use of criminal sanctions.

So I don't think it is desirable, really, to say we are suddenly going to look into activities that went on for 20 years and try to allocate personal blame going back that far.

We ought to know about them; we ought to try to understand them, and we ought to try to avoid them in the future. And, where there are violations which are presently prosecutable, I think they should be prosecuted.

Senator CHILES. Well, again, that is one thing, but how do we reassure the people that these things are not going to take place in the future and that they are not continuing to take place?

Attorney General LEVI. I think we have to try to say more about them. We have to try at least to be much clearer as to what the rules are, what the proper standards are. I think we have to seek legislation and I do believe in oversight.

Senator CHILES. That would certainly be one of the purposes we would hope the oversight committee would perform in their functions.

Attorney General LEVI. Certainly, but I want to emphasize that I think that sometimes it is an odd thing but the repetition of the description of the abuses doesn't reassure people; it just alarms them.

I testified 2½ weeks after I became Attorney General before the House Judiciary Subcommittee on some of the actions concerning the files of the Bureau of Investigation.

That testimony really covered most of the things that have come out since. I didn't underline and use names and so on because I wanted to avoid this kind of apportioning of blame between different administrations and I didn't want it to be a politically motivated matter or put in that kind of context.

I think anyone looking at that testimony would see that it really stated much or most, maybe all, of what has come out since.

So, it is the way of putting it and, of course, if we keep repeating these things we create myths, and I am not sure in the long run that is helpful.

But I am sure it was necessary, and it does provide a setting in which we ought to get desirable legislation, desirable rules and that would be its greatest service.

Senator CHILES. I notice that Senator Church, in his statement, is now advocating the appointment of a special prosecutor to look into the revealed abuses that have taken place by the CIA and the FBI. I think part of it was the FBI.

Since the FBI is a part of the Justice Department, it was his feeling that it would be necessary that a special prosecutor be appointed to look into these abuses, a role that the Justice Department, being in charge of the FBI, would not be able to carry out.

Have you expressed yourself on that proposition?

Attorney General LEVI. Well, I did a little earlier in this session. As I said, I didn't agree with Senator Church and he indicated in the newspaper this morning that he knew I disagreed.

So, I just don't think it is a good idea. I don't think that is the way to restore confidence in the Department of Justice.

I don't think that is the way to have an orderly administration of justice.

So, I hope that that is not the course which will be taken.

It doesn't seem to me that there is any reason to believe that the Department of Justice in normal course cannot effectively handle violations of the criminal law whether they occur within the Department or elsewhere in the Government, and I really believe that Senator Church is calling for the existence of a permanent special prosecutor to run alongside of the Department of Justice; in effect, to be a kind of second attorney general, but presumably one who has come so recently that he is honorable.

I don't know how long that would be but I suppose two months would be about the length of time one could retain that honor.

So, you would have to have a rotating special prosecutor. I don't like that idea very much.

Senator CHILES. You have no hesitancy to feel, as Attorney General, that the Justice Department under your authorization and your leadership could carry out this prosecution?

Attorney General LEVI. Well, if I didn't think so—and as I think I indicated earlier—I just wouldn't be here. I think it is also important to say that I also do not intend to have the Department engage in prosecutions for the purpose of showing that it can do so when it ought not to do so.

The Department's position is to, in this and other matters, play it straight. That's the kind of a department it ought to be.

That's the way confidence in the Department will be strengthened.

Senator CHILES. One of our great problems seems to be that in the CIA and in the FBI no one had really clearly laid down the lines of authority. No one clearly required accountability for what should have been the lines of authority or the conduct.

In many instances I think some of the agents perhaps thought that they were doing expressly what they should be doing to carry out their obligations to their country.

What is the Justice Department doing now in regard to the FBI, which is under the Department of Justice, to set those lines of authority and to require accountability?

Attorney General LEVI. Well, as I indicated somewhat earlier, we are drafting guidelines for the Bureau which will cover all major

portions of its operations and indicate the way the authorization has to be given, the directions have to be given, and so on.

That still isn't going to get to the point of what the individual agent may believe and can reasonably believe and that's a much more difficult matter.

I think one has to control that by controlling it from the top.

Senator CHILES. Is that going to be controlled from the top?

Attorney General LEVI. Well, there is. I think, also, the Bureau will show, and so will the Department, that it is perfectly capable of administering that control and of bringing prosecutions or whatever is required when it is appropriate.

As I said, the one thing that troubles me is that I don't, I really don't, want to face these problems in any kind of a political atmosphere, which suggests that particular actions have to be taken in order to make people feel better or not feel better.

Guilt is a personal matter. Every citizen is entitled to justice and we are not going to approach it any other way.

Senator CHILES. Senator Javits.

Senator JAVITS. Yes; thank you very much, Senator.

Mr. Attorney General, there are many questions in my mind—

Senator CHILES. Excuse me just a moment. I am going to have to go to the Rules Committee.

Senator JAVITS. Yes, all right. I will have to go myself.

Senator CHILES. The other members are going to be back.

Senator JAVITS. Will it be all right as we drift in and out—will you bear with us? Will you tell me when you have to leave and we will try to adjust ourselves.

Attorney General LEVI. I do have to be at a meeting, I guess, at 11:30, which means I should leave before then but my general impression is that the committee should not feel that it is essential to keep me here that long in order to fill up the gaps [laughter].

Senator JAVITS. I will say that the Attorney General of the United States will not be used as a filler; not by me or anyone else.

I have some fundamental questions I would like to explore which are raised by you immediately in your testimony. I humbly apologize but we are torn between a bill on the floor and these hearings, and I am one of the ranking Members that is assigned to the bill on the floor.

I think you posed the question very properly at the top of page 2 of your statement in which you say:

Among the subjects which I would like to discuss with the committee are these: First, what are the constitutional and institutional constraints on Congress' role in this area; second, how, in providing for performance of Congress' legitimate role, can the confidentiality of information essential to intelligence operations best be maintained.

As to this latter point, one may distinguish between the authority of the Congress to obtain information for a particular committee or committees, or for the Congress more generally and the authority of the committee or Congress to publish such information * * *.

I would like to pause at this point and ask you whether you make a distinction between the committee and the Congress or whether you consider, as a matter of law, that a committee of Congress is an agent of the Congress and that that agency, used again in its classic term, may at any time be withdrawn or superseded by the principal?

Attorney General LEVI. If I understand the question, it is whether the Congress or a particular House of Congress could control the activities of a committee which would be regarded as its agent, and, not being an authority on the parliamentary rules, I would answer easily that I assume that the Congress can, that the Congress is the principal, and that the committee is the agent, but I accept the notion that there may be some intervening rules which have to be looked at.

Senator JAVITS. My construction is, and I would like to state this for the record, that there is no authority in any committee except as specifically granted by the Congress or the particular House of which that committee is a committee, that that authority may at any time be withdrawn; and, second, that it is constitutionally impossible for either House to devolve upon a committee its powers; in other words, by any resolution or rule to forego the authority to terminate that agency whenever it chooses.

Now, I would greatly appreciate it if the Attorney General would check that out and give us his opinion in writing¹ because that is a question of law and we are entitled, I think, to ask the Attorney General for his view.

We may not abide by it, but we are entitled to it.

The reason I ask that question, Mr. Attorney General, is that I think it introduces an element of confusion when there is some pretense that the committee is an autonomous body; or, that—and this is the critical thing for you and for the President—anything any committee knows is not something which that House is entitled to know and that there is no law which can permit a committee to refuse to divulge what it knows to its House.

Once it knows it, its House knows it, and that is a very important point.

You cannot, in my judgment, immunize a committee from its House. It is nothing but an agent and, therefore, owes an obligation to its principle which would equate to a fiduciary character.

The Attorney General may not wish to address himself to that now.

Attorney General LEVI. All I wish to address my self to is if that is an opinion, I haven't signed my name to it.

Senator JAVITS. No, it is my opinion and I am advancing it in order to elicit from you a response ultimately.

Let me tell you why it is important to us. There is legislation around here, or suggested legislation, which would try to deal with this very gray area by giving some committee autonomy from its House.

I say it cannot be done. So, we better not fool with legislation like that.

Attorney General LEVI. But you are not suggesting, or are you, that any information which comes to a committee must automatically be given to the entire House?

Senator JAVITS. No, no, the House itself may shut itself off from that information but it may also withdraw the privilege which it will grant to a committee.

Attorney General LEVI. Yes, and I should add beyond that there isn't any legislation that can deprive the President of his powers of privilege for particularly sensitive matters, and how that power, therefore, will be exercised by a President ultimately will depend upon

¹ See p. 481.

what kind of a working relationship does occur and can be mutually counted on.

Senator JAVITS. I agree with you. In other words, I believe that the President, also, like we, has certain powers which cannot be taken away.

That goes to the question of whether he may pursue a covert operation even though the committee which we have delegated for the purpose, and given authority to, that is, we in the Senate, may say no, Mr. President, you may not do that.

He may take his chances and he takes great chances. He could be impeached, but we cannot, in my judgment, make a law which says you may not do something in your executive responsibilities unless you get our consent.

Attorney General LEVI. Well, you want an opinion on that or—

Senator JAVITS. Well, whenever you are ready to give it.

Attorney General LEVI. I think that kind of matter is sufficiently complicated so that if I am going to express myself on it I ought to write it out because one has to assume a lot of different things.

I don't know what is being assumed, for example, about the appropriation restrictions and so on.

Senator JAVITS. The appropriations—that is where our power comes in. He can't do anything about that. He can veto it. That's all.

I am saying that because if we are going to legislate intelligently, we have to establish the parameters of authority, of power, and this is very highly important under the Constitution.

There are certain things we can't take away from him; there are other things he can't take away from us. He can veto; we can impeach, but that's under the Constitution, that is perfectly proper.

But, to hold him liable under the law because he violated a law of the United States, if he did something which we, over his veto, incorporated in law, that is the question we are ready to talk about.

Lastly, it is a fact, is it not—and please correct me if I am wrong—that we may legislate in the area of methodology, that is: Who, when, where, and what justifications need to be given, though the President, of course, is at liberty to say he is not going to give us any justification, that he simply stands on his powers.

Can we legislate methodology by which these relations shall be conducted? Of course, we did that in the war powers resolution and we did it in other respects. For example, in the range of issues right in the bill on the floor right now, the military assistance bill, in which we have reserved, I think, eight or nine various powers which we give the President subject to our determination or modification or change on a concurrent resolution, really termination not modification or change.

We cannot do that because that would be new law.

So, I submit that to you as also an additional question on which we would need your guidance.

Attorney General LEVI. I think various procedures can be established but the answer to your question depends on what powers are involved and it also depends on the kind of relationship this assumes that there is a point beyond which legislation cannot go because it impinges on a constitutional power of the Executive, so we might have problems.

Senator JAVITS. In other words, if methodology becomes substantive law.

Attorney General LEVI. That is right.

Senator JAVITS. I understand that.

The other question I would like to raise concerns the right of the individual to disclose, that is the speech and debate clause in the Constitution, which is a very knotty question there, too.

I think we ought to have an authoritative view from the Attorney General on that. It is my impression that the speech and debate clause is very extensive and that I think it would be impossible to curtail it, even as to secrets but that what we can do—again, this is pretty much a parallel to what we have been just discussing—is to make it so dangerous, so risky for the individual that he will have to think very carefully about disclosure and the impact on the national interest.

You can only make it so costly to do that so that most of mankind would hardly think of attempting it.

You know, the idea that there is really any way of getting at that except by giving notice before the fact seems to me to be very hard to accomplish.

If the Attorney General wishes to call our attention to any element of the law which he thinks could give us some greater control other than the deterring effect of very severe penalties, I think we would all be very anxious to hear that.

Attorney General LEVI. As you were suggesting, one has to put it into various categories.

What you have suggested itself was that it would be a curtailment of abuse of the clause because penalties imposed by the Congress itself I suppose would be a deterrent.

I would suppose the Congress can always insist that certain matters only be taken up in executive session and enforce that.

Senator JAVITS. And enforce breaches of executive session. That is the key point here.

I think, Mr. Attorney General, too, that he is now speaking of the issue of policy, that we would have every right to expect that the same thing would occur in the executive department.

I have observed in the testimony of witnesses from the executive department that a certain sense of exclusivity obtains as if there were never any leaks or breaches of secrecy out of the executive department and they all come out of the Congress.

So, I think as a matter of policy we would and we should.

Attorney General LEVI. I take an all-embracing view on that myself.

Senator JAVITS. I think that is extremely helpful.

The last point I would like to cover with you, too, is this question: What would you think if a President says to us, "Look, I am not going to tell you anything about so and so because that's my authority and I am sticking to it"?

What about requiring him to give a justification for his withholding of that information? In other words, if he doesn't justify it we can't do anything about it except the most drastic remedies, but at least to require a methodology, that he should have the obligation to tell us why he won't disclose.

Attorney General LEVI. I am not so sure that is a legal obligation that you can enforce.

I am really not sure of the nature of the question. If one assumes, and one really has to assume, some sort of court action and if one assumes that the purpose is to get the information, and that the agencies of the Congress have the power to bring the action, and that the court will consider it, I suppose, to some extent, the reasonableness of the posture in which the President has placed his refusal might be influential.

But beyond that, assuming that it is material which it is truly within the privilege of the President not to give, I don't suppose his behavior would have immediate legal consequences.

I should think it would have long-run political consequences.

Senator JAVITS. That is what I meant when I spoke about intention.

My last question, and I have undoubtedly run over my time, Mr. Chairman, is this: Yesterday we took an amendment from Senator Eagleton on the Senate floor on the military aid bill which, in effect, said that the President shall justify to us a certain state of facts if we believe that that state of facts exists.

In other words, we have a right to say to him that we believe such and such a state of facts exists and what are the facts on it.

The word used was "shall."

Now, would you have any opinion as to that, other than the fact that the President may, if he chooses, simply say, "OK, you said, 'shall' but that is not my construction so I won't," which is unfortunate in government.

We shouldn't put him in that spot; he shouldn't put us in that spot.

Attorney General LEVI. Well, I certainly agree with the last statement; otherwise I am not sure, I would have to know more about the setting.

Your doubts about the power, I think, are in order.

Senator JAVITS. Would you mind, sir, if you could answer it, it would be helpful because we will be going to conference on this bill.

Attorney General LEVI. I have not seen the amendments.

Senator JAVITS. We can submit that to you.

Thank you, Mr. Chairman.

Chairman RUDOLPH [presiding]. In behalf of the committee I apologize for the committee running in and out but we had obligations and I often wonder at Congress criticizing the way the executive branch is organized when I think of how we organize ourselves.

I guess we have the privilege of criticizing others for what we ourselves are guilty of.

I do appreciate your being with us.

Again, as I said to you before, and as I said to the other administration witnesses, this committee did not sit down and have preconceived ideas in these hearings.

It was not our intention—I think we stuck pretty close to it—to go into all the material of the Church committee and the Pike committee.

We are future oriented instead of past oriented.

It is my personal feeling that we are going to have to go through a trial period to see if Congress and the President can accommodate themselves with one another.

I think, personally—and I may be overruled by the committee on this—but I don't see how this is going to be achieved if we are going to have the Congress and the Executive working together in mutual

trust for the good of the country. We are going to need a trial period to work this out.

So, it becomes very important as far as I am concerned, as chairman, to have input from the administration, but not to rely on strict constitutional construction when you have almost every witness for the administration talking absolutely to the contrary, from a practical standpoint, of how we live together. We don't want to impose upon them the Constitution but there is going to have to be this period of accommodation for what I consider at least a period of 9 months or 1 year while we work this out, and then come back to see.

It has become apparent, from every witness, that the entire intelligence community is now under a cloud, that this is dangerous and bad for the country and bad for the intelligence community.

It is almost unanimous—there are a few exceptions—not from the administration witnesses or from Members of Congress—that this oversight committee should be formed and, as former Director Colby said, the sooner the better.

So far we have had no input from the administration. I don't intend to wait for it. This committee has got an obligation and we will sit down beginning the 18th of this month and start working.

We will work with the administration or without the administration. It is entirely up to the President and the members of his staff.

This committee has always accorded a courtesy to the Executive and various members of the executive branch, and I would hope that the executive branch will recognize the reciprocity that they owe us as well.

So, in your discussion during the next week, I hope the Executive input will be forthcoming. I have made a request of the entire staff and every member of this committee to see whether during this recess the staff could get together and start wrestling with many of the problems that face us.

The staff is available to the executive branch, too, for discussions during this week. Every member of the staff will be made aware by the members of the committee that he serves, of the member's philosophy and thinking so that on the 17th we can collate that, and on the 18th we can start working.

So, I would hope, Mr. Attorney General, that to the extent that you have any input, especially with the Federal Bureau of Investigation, we would have your thinking by that time.

Senator JAVITS. Mr. Chairman, can I have just one word?

Chairman RIBICOFF. Senator Javits.

Senator JAVITS. Can you give us 2 more minutes, Mr. Attorney General?

Attorney General LEVI. Yes; fine.

Senator JAVITS. There are two more items that bother me and we have heard a lot of talk about the President's constitutional power to conduct foreign affairs.

The word "conduct" is quoted. It is in some of the cases. The question is we have not heard anything about the Congress power in respect to foreign affairs, to wit, the advise and consent role, the oversight role, and the right to information in order to advise and consent.

Those are three critical functions.

So, how do you balance those off? It becomes practical in this way: If a penal statute or congressional disciplinary action is to apply to a classified document, does the President alone have the power to classify and what, if any, power does derive from our authority in respect to foreign policy to classify or unclassify?

Now, this is a very critical point and I am speaking exactly to the point our chairman has just discussed of helpfulness in drafting the legislation.

Chairman RUBIOFF. Thank you very much.

The committee will stand adjourned. Thank you for your time, Mr. Attorney General.

Attorney General LEVI. Thank you.

[The prepared statement of Attorney General Levi and the responses to the questions from Senator Javits follow:]

PREPARED STATEMENT OF HON. EDWARD H. LEVI, ATTORNEY GENERAL OF THE UNITED STATES

Mr. Chairman and Members of the Committee:

I appreciate your invitation to discuss with you today congressional oversight of intelligence operations. We all recognize the seriousness of the subject. Substantive foreign policy determinations and establishment of defenses adequate for our nation's security are among the most essential demands upon our government. Errors in such decisions carry the potential for immediate and severe consequences both for ourselves and for our friends abroad. The wisdom of these decisions cannot be guaranteed; we can rely only upon the informed judgment of those charged with making and those charged with carrying out our policy. How our intelligence apparatus is constructed, then, is literally a vital question. In addition, it must be of particular concern that any system of surveillance be conducted with a scrupulous regard for citizens' rights of speech and privacy. The Congress and the President share the responsibility of assuring that the intelligence system employed by this government at once provides the information necessary to both policy formation and implementation and protects the constitutional rights of the citizenry.

Among the subjects which I would like to discuss with the Committee are these: First, what are the constitutional and institutional constraints on Congress' role in this area; second, how, in providing for performance of Congress' legitimate role, can the confidentiality of information essential to intelligence operations best be maintained. As to this latter point, one may distinguish between the authority of the Congress to obtain information for a particular committee or committees, or for the Congress more generally; the authority of the Committee or Congress to publish such information; the state of the law as to the power of members of Congress or their staffs under the speech and debate clause to divulge such information, and the persistent problem, whenever there are matters of high secrecy, of completely unauthorized, intended or unintended, disclosures. I would like then to proceed to the topic which concerns the role of the Federal Bureau of Investigation as essentially a law enforcement agency, and the difficulties which have to be faced if one seeks to view its intelligence functions as separate for oversight purposes.

While responsibility is shared for ultimate success in constructing viable intelligence procedures and formulating intelligence policy, the mode of discharge of this responsibility by the Executive and Legislative Branches must differ. Congress may by statute set policy in those areas granted for its consideration by the Constitution and may determine acceptable procedures for officers and agents of the federal government. It may gather information necessary to this function. Daily implementation of policy and interstitial policy formation, particularly in foreign affairs, is an Executive function. This Separation of Powers is, of course, basic to our government. As stated by the Supreme Court one week ago in *Buckley v. Valeo*, Slip, op. at 113-114:

"... all litigants and all of the courts which have addressed themselves to the matter start on common ground in the recognition of the intent of the Framers' that the powers of the three great branches of the National Government be largely separate from one another."

The limits upon the powers of the respective Branches are distinctions of degree. Each branch has at times crossed into the area of another, and I suggest the Framers assumed a certain flexibility in this regard. But recognition of the constraints of the principle is required of all branches, as Jefferson pointed out in his *Notes on the State of Virginia*. The line must be drawn. The Supreme Court drew that line in *Buckley*, supra, but more often the line must be drawn by forces of institutional self-restraint. The importance of oversight is not challenged by saying that a line must be drawn there also. There is a question of how far a committee can go in monitoring intelligence operations for legitimate legislative purposes before the tendency develops to attempt to manage them. The oversight bill submitted by the Chairman of the Senate Select Committee last Thursday, S. 2893, would create an intelligence committee "to assure that such activities are in conformity with the Constitution and laws of the United States." The bill further requires that the committee be kept "fully and currently informed with respect to intelligence activities," and that no significant covert or clandestine operation (other than activities solely for the collection of intelligence) go forward "unless and until the Committee . . . has been fully informed of the proposed activity." Members of Congress as well as the President have a duty to our Constitution, but it is the President's responsibility under Art. II, Section 3 of the Constitution to "take care that the laws be faithfully executed." I do not question for a moment the need of such a committee for information sufficient for its legitimate purposes. But the line between that information which is needed for these purposes and the information needed to assume managerial duties is, in my view, the determinant of what information can properly be required. Thus Senator Fulbright, in commenting on a proposed amendment to the Mutual Security Act of 1957 containing a "fully and currently informed" reporting requirement, stated:

"Under our system of Government the very fact that we have a legislative and executive branch necessitates that one branch must, occasionally, accord to the other branch a certain degree of trust. If the amendment of the Senator from Wyoming means anything, it means that he is not satisfied with the way the executive branch is administering the law, and he wants the legislative branch to take over that function by requiring full and current reports, why does the Senator want that if it is not to assume the responsibility which is in the Executive? If we are to be fully informed, then I suppose we should take the responsibility of administering the law day by day. It is a wholly unworkable approach to this problem." 103 Cong. Rec. 9150.

The amendment was defeated. The point is delicate but fundamental.

Whatever mechanisms are devised for Congressional intelligence oversight, they must leave to the Executive such discretion as the Constitution places in his Office and the ability to act within his sphere without unwarranted and debilitating restraints. Some procedures which might work in other areas will be inappropriate in a field as volatile and sensitive as foreign intelligence. The impediments commonly associated with intermediate bureaucracies would here serve neither the Congress nor the nation. "Energy in the Executive," wrote Hamilton in *Federalist No. 70*, "is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws." The Executive must retain the freedom to respond to what Jefferson in the context of the Louisiana Purchase called the "fugitive occurrence" demanding prompt and decisive action. The President too is the representative of the people, and his Office was designed to afford a capacity for action and decision.

A specific aspect of Separation of Powers raised by oversight of agencies charged with gathering foreign intelligence and of the Federal Bureau of Investigation's criminal investigatory functions is the existence of privileged information within the Executive Branch. The doctrine of "Executive privilege" has come through a stormy season, yet in the eye of that storm, the Supreme Court affirmed the constitutional basis of the privilege and, when properly utilized, its essential public purpose. In *United States v. Nixon*, 418 U.S. 683 (1974), the Court stated:

"The privilege is fundamental to the operation of government and inextricably rooted in the separation of powers under the Constitution.

* * * * *

"Nowhere in the Constitution . . . is there any explicit reference to a privilege of confidentiality, yet to the extent this interest relates to the effective discharge of a President's powers, it is constitutionally based."

The Court, while requiring production of material over a claim of privilege by the Executive in that case, was careful to emphasize that the information sought was not claimed to involve military, diplomatic, or sensitive national security secrets.

The Supreme Court quoted from the 1948 opinion of Justice Jackson in *O & S Air Lines v. Waterman Corp.*, 333 U.S. 103, 111, "The President, both as Commander-in-Chief and as the Nation's organ for foreign affairs, has available intelligence services whose reports are not and ought not to be published to the world", and from Chief Justice Vinson's opinion in 1953 in *United States v. Reynolds*, 345 U.S. 1, where the Court said:

"It may be possible to satisfy the court, from all the circumstances of the case, that there is a reasonable danger that compulsion of the evidence will expose military matters which, in the interest of national security, should not be divulged. When this is the case, the occasion for the privilege is appropriate, and the court should not jeopardize the security which the privilege is meant to protect by insisting upon an examination of the evidence, even by the judge alone in chambers."

Admittedly, the Court in *United States v. Nixon*, as it pointed out in a footnote, was not concerned "with the balance between the President's generalized interest in confidentiality and the need for relevant evidence in civil litigation, nor with that between the confidentiality interest and congressional demands for information, nor with the President's interest in preserving secrets." There may be disagreement as to whether the Congressional claim for information is stronger or less strong than that of the judiciary in criminal proceedings or of a grand jury. The District of Columbia Circuit's decision in *Senate Select Committee v. Nixon* suggests that the answer depends on particular circumstances. As you recall, in that case—the only case concerning a claim of executive privilege as against a congressional committee subpoena—the Court held that the committee's need for the information was not sufficient to overcome the general need for executive confidentiality, even though the same court had earlier held, in *Nixon v. Sirica*, that the grand jury's need for the same information was sufficient to defeat the generalized claim of privilege.

The Senate Select Committee decision, however, rests clearly on the point that the privilege applies to congressional, as well as judicial, subpoenas. As the Supreme Court stated in *United State v. Nixon*, the claim of privilege "can be said to derive from the supremacy of each branch within its own assigned areas of constitutional duties," and pointed out that the fact that there is no provision in the Constitution for a presidential privilege as to the President's communications corresponding to the privilege of Members of Congress was not dispositive of the issue as to whether there was such a privilege.

There is one area of confidentiality which I wish to emphasize as of special importance in the context of oversight of the Federal Bureau of Investigation. I refer here to the privilege with respect to investigatory files. Attorney General Jackson stated cogently and succinctly the justification for withholding certain material in such files even from the Congress in an official opinion letter to Chairman Vinson of the House Committee on Naval Affairs.

"[D]isclosure of the reports would be of serious prejudice to the future usefulness of the Federal Bureau of Investigation . . . [M]uch of this information is given in confidence and can only be obtained upon pledge not to disclose its sources. A disclosure of the sources would embarrass informants—sometimes in their employment, sometimes in their social relations, and in extreme cases might even endanger their lives. We regard the keeping of faith with confidential informants as an indispensable condition of future efficiency." 40 A.G. Op. 45, 46-47.

The then Attorney General went on to observe, "Disclosure of information contained in the reports might also be the grossest kind of injustice to innocent individuals. Investigative reports include leads and suspicions, and sometimes even the statements of malicious or misinformed people."

The necessity of at times withholding investigatory files from Congress has been analyzed by Professor Cox as follows:

"A judicial proceeding is usually adversary. The plaintiff and defendant may be expected to call for observance of rather strict rules of evidence which would exclude most of the contents of such files as hearsay or otherwise incompetent long before reaching any question of privilege. In legislative hearings the committees quite properly refuse to confine themselves to evidence competent in a court. There are no parties. The Executive must therefore take it upon itself

to protect individuals against disclosure of untested allegations and reports. It is all too clear that fairness requires some protection for the individual; it is also beyond argument that the interests of efficient administration are thereby served. Men and women will be less willing to take positions in the government if they know that they thereby open themselves to publication of rumors and false allegations. Informants will be less likely to come forward with information. The government may shrink from conducting a thorough investigation knowing the risk of abuse of what it gathers. Few individuals whose files were publicized in congressional hearings conducted by a publicity-seeking Senator or Representative would think themselves protected by the rights to cross-examine and offer opposing testimony. For such reasons few of the present critics of executive privilege found fault with Presidents Roosevelt, Truman and Eisenhower for withholding intelligence or loyalty and security files." Cox, *Executive Privilege*, 122 U.Pa.L.Rev. 1383, 1426-27 (1974).

Wide ranging demands by an oversight committee for personal investigatory matter, and certainly the public disclosure of such material, would vitiate the purposes of the Privacy Act and of the Freedom of Information Act's exemption. The purpose of the Privacy Act, expressed in section 2(b), was to provide "safeguards for an individual against the invasion of personal privacy." This was accomplished, among other means, by establishing the strict limitations contained in 5 U.S.C. § 552a(b) on the permissible dissemination, disclosure, and use of information about individuals without their prior consent. The same policy is embodied in Exemption 7 to the Freedom of Information Act's compulsory disclosure requirement—5 U.S.C. § 552(b)(7). That section, as amended in 1974, exempts investigatory records compiled for law enforcement purposes from disclosure when disclosure would "constitute an unwarranted invasion of personal privacy." At the same time, Exemption 7 recognizes that disclosure of investigatory files may seriously endanger law enforcement interests. Accordingly, investigatory files are exempt from compulsory disclosure when disclosure would, among other things, reveal the identity of a confidential source or confidential information furnished by a confidential source, "disclose investigative techniques and procedures," or "endanger the life or physical safety of law enforcement personnel."

Both the Privacy Act and the Freedom of Information Act provide specifically that their intent was not to prevent dissemination of information to the Congress. (5 U.S.C. 552(a)(b)(9)—Privacy Act.) In the past broad demands for this kind of information by committees have been infrequent. But if there were broad demands in the future, the protection announced by these Acts would become illusory. Moreover, protection would not be just dependent upon safekeeping of the material by the committees. I fear that routine release of personal information from criminal investigatory files would create the potential for and, inevitably, the suspicion and the fear of misuse of that information.

Executive privilege, constitutionally grounded as it is as an incident of Executive power, and recognized by the courts as such, is not in my view subject to legislative annulment. Should that privilege be invoked in circumstances deemed inappropriate by the proposed committee, the possibility of litigation of the question exists. I would note, however, that it is by no means clear that a court will accept jurisdiction over such an issue or that a court would or could produce any firm or (from the perspective of the Congress) even desirable guidelines. See *Senate Select Committee on Presidential Campaign Activities v. Nixon*, 498 F. 2d 725, 732 (D.C. Cir. 1974).

I would anticipate that invocation of an absolute privilege against disclosure of information to a congressional intelligence oversight committee would be a rare occurrence. With regard to the recently completed investigations, the President has turned over to the Congress an extraordinary amount of highly sensitive information in order that the committees might carry out their mission. Successful democracies achieve an accommodation of competing values.

I believe the point is well made in a recent lecture by Judge Henry Friendly of the United States Court of Appeals for the Second Circuit. Judge Friendly, one of our country's most distinguished jurists, wrote as follows: "It is no accident that we should recently have been witnessing a series of near confrontations over the desires of congressional committees to burrow ever more deeply into the files of the Executive Branch. I have not made the study needed to arrive at a judgment just where the lines should be drawn, and it would be improper for me to express an opinion if I had one. But it cannot be wrong to suggest that both sides did well to work out accommodations; that the courts

should not be called upon too often to umpire contests between the other branches; that while the Executive should not force Congress into protracted judicial proceedings in order to obtain urgently needed information, Congress may be wise sometimes to settle for less than its maximum demands, since, on the one hand, not everything in Presidential and departmental files is truly confidential and, on the other, Congress does not really require, or at any rate need to divulge, every last nugget of sensitive information in order to legislate intelligently or to discharge its duties as the grand inquest of the nation. Although neither Congress nor the Executive should sacrifice fundamentals, the spirit of the framers calls for what the Supreme Court has termed a "formula of compromise." Just as Presidents should recall the wisdom of Washington in giving the House of Representatives everything it wished about the failure of the St. Clair Expedition, so legislators should reflect on what Senator Fessenden said in defending the legality of a Senate inquiry into John Brown's raid:

"I am ready to use judiciously, calmly, moderately, all the power which I believe is necessary and inherent, in order to do that which I am appointed to do. . . ."

Judge Friendly adds with respect to the last quotation: "The adverbs are as important as the assertion."

I have raised the subject of executive privilege for one important reason: to urge that any system which you establish leave room for accommodation of the Presidential obligation to maintain secrecy and the congressional need for information, through various arrangements which the two branches have in the past devised, and which have been generally satisfactory. I think it would be a mistake for the Congress to disable a committee from agreeing to accept certain information with the understanding that it shall not be further disclosed or from adopting some other means of accommodation. Such a restriction would eliminate one of the principal buffers that have cushioned what might otherwise have been repeatedly harmful collisions between the two branches in the past.

In suggesting such arrangements, however, I must emphasize that assurance of tight and enforceable procedures to maintain the confidentiality of the sensitive information with which the proposed committee will be largely concerned will be a prerequisite to a conscientious decision to disclose by the Executive. The dangers of disclosures of the nature anticipated and their potential impact upon the efficacy of our intelligence apparatus was advanced by Jay in *Federalist* No. 64 where he wrote that those who would supply useful intelligence "would rely on the secrecy of the President" but would not confide "in that of the Senate and still less in that of a large popular Assembly." Jay's premise bears articulation in the current climate—not all secrets are intended merely to save an Administration embarrassment.

Secrecy, despite the unpopular reputation it now has, is a responsibility of the governors of any State in the conduct of certain affairs. Intelligence operations are the prime example of such affairs, and for that reason the task of the members of the proposed oversight committee will be, as the decisions involving foreign intelligence have always been for the President, extremely difficult and taxing. The committee will have to accept the responsibility of legislatively responding to specific information without the benefit of the vigorous public debate from which the policy of a free government ordinarily draws its vitality. Decisions in this area cannot be made by referendum. Intelligence oversight is a quintessential case in which, in Edmund Burke's phrase, the people must rely upon the judgment of their representatives as well as their industry. Unless we are to depart from the judgment of statesmen from the beginning of time and forgo intelligence gathering altogether, we must accept some of the burdens of its endemic secrecy.

Since secrecy is essential, I would like to address the mechanisms for its assurance which might be established. Adequate procedures for confidentiality would, in my view, form the cornerstone of a cooperative relationship between the proposed committee and the Executive. I stress cooperation. The branches of government were not designed to be at war with one another. The relationship was not to be an adversary one, though to think of it that way has become fashionable. Inevitably in a system of divided powers there are points where responsibility conflicts, where legitimate interests and demands appear on either side. The essence of compromise is that there be no surrender of principle or power on either side, but a respect for the responsibility of others and recognition of the need for flexibility and reconciliation of competing interests. Insti-

tutional self-restraint does not mean that we must have a government of hesitancy. It does mean that the duty to act is coupled with a duty to act with care and comity.

Creation of viable procedures by which classified information will be protected from public disclosure has to be seen against the background that Congressmen and their staffs have immunity from judicial process with respect to their legislative acts—acts that include, under the Supreme Court's decision in *Gravel v. United States*, 408 U.S. 606 (1972), the public disclosure of classified material in the course of congressional debates and hearings. The immunity from external sanction, absent any viable system of protection enforced by the Congress itself, inevitably reinforces the possibility that dangerous disclosures, however motivated, will occur.

Whether any or all of this information *should* be classified is not the issue. Rather the issue is whether any one Representative, Senator, or staff member, or even a majority of any committee should have the unbridled power to make that decision. Today, once information is disclosed to them, they do have that power whether under their immunity or through "leaks," with the result that when any one Congressman, Senator, or staff member personally believes that the information should be made public, it can be made public.

This is true, although the result may be to halt, obstruct, or otherwise interfere with the lawful operations of the Government. So long as this power exists and is exercised, one may expect serious reservations on the part of the Executive to the furnishing of classified information to an oversight committee.

What can be done? S. 2893 takes a step in the right direction by creating a procedure by which disclosure may be authorized, and prohibiting disclosure except as authorized. The procedure, however, provides that the final decision is to be made either by the Senate in closed session or by the Committee itself. As to release by the Committee itself, I wonder if it is the best resolution to permit five members of any committee to have such a power. As to release by the full Senate, with all due respect, one has to emphasize the difficulties that must be met if such a procedure is properly to safeguard classified information. Simply put, the danger of public disclosure depends, in part, on the number of persons who have access to information. Moreover, assuming that the House had a similar procedure for a similar oversight committee, or if the committee were joint, one can easily imagine one house voting to publish and the other not.

There are other alternatives. Section 112(b) of Title I of the United States Code, for example (the so-called Case Amendment), provides that the Administration shall transmit to the Congress international agreements, but the President may require that an agreement be held in confidence until he determines that secrecy is no longer essential. The Congress retains, of course, the ability to bring its not inconsiderable political power to bear in favor of lifting the injunction to secrecy.

A precedent with less assurance of success, but perhaps workable, would be the procedure agreed upon between the President and the House Select Committee under which the Committee could not release information given it if the President certified in writing that public disclosure would jeopardize national security. The Committee retained the option, however, of seeking judicial resolution should a dispute over release arise.

Whatever system is devised for determining whether disclosure should be made, there must be some means to ensure that the system is not circumvented by disclosures that have not been approved. Could there not be a clear statement by the Congress that members or staff responsible for leaks *will* be subject to penalty? The bills which I have examined contain no adequate sanction provision, if such a provision is desired.

There are, I know, severe practical obstacles to congressional enforcement of rules against disclosure. Perhaps the only appropriate comment for me to make is that I believe this is a most important and difficult problem which has to be looked at directly, I trust, by this Committee.

In short, as you review various proposals for oversight committees, I would urge that it is in the interest of our country, and in the mutual interest of both the Congress and the Executive to create procedures, sanctions, and controls which adequately assure that classified information provided the committee will be maintained safe from disclosure. Congressional involvement in decisions relating to intelligence activity should not, and I trust, will not mean that there will be no confidentiality to intelligence practices or that there will be a permanent on-going revelation of all practices for the purpose of public debate. There is a burden, as I have said, to the necessity for some secrecy. Without assurance

on that point, the committee will never be able to play the role which has been envisioned for it.

Finally, I wish to raise with the Committee the problems which I believe will be present when Congressional oversight of intelligence activities is chartered so broadly as to include oversight of important segments of the Federal Bureau of Investigation which are essentially of a law enforcement character, and which should be closely related and tied to law enforcement. This includes domestic security as well as counterintelligence responsibilities of the Bureau.

Unlike agencies such as the CIA, whose mission is the collection and evaluation of intelligence, the FBI is essentially a law enforcement agency. Its principal responsibility is the detection and investigation of violations of the Federal criminal laws. This is the direction which must be emphasized. It is the direction Attorney General Harlan Fiske Stone emphasized when he stated:

"The Federal Bureau of Investigation is not concerned with political or other opinions of individuals. It is concerned only with their conduct and then only when such conduct is forbidden by the laws of the United States. When a police system passes beyond these limits, it is dangerous to the proper administration of justice and to human liberty, which it should be our first concern to cherish."

As I indicated in my statement before the Senate Select Committee on Intelligence Activities last December, it does not follow from Stone's sound warning, for example, that domestic security investigations conducted by the Bureau are outside the Bureau's proper functions. It does follow that those investigations should be conducted only to ascertain information on activities which involve or will involve the violation of federal law. The detection of crime in many areas (and not only the domestic security area) requires preparation and at least some knowledge of what activities are taking place. This is true, for example, in organized crime investigations, as well as in domestic security investigations. While these responsibilities of the Bureau may be characterized as intelligence activities, they are, as they should be, directed toward its criminal law enforcement function.

The point I have made about domestic intelligence investigations applies as well to FBI counterintelligence activities, which have a similar law enforcement nexus derived from the antiespionage statutes. While the results of these activities may on occasion manifest themselves in forms other than criminal prosecution, the connection with law enforcement is inseparable.

In the foreign intelligence area, the work of the Bureau is almost invariably related to counterintelligence, and thus to law enforcement. It is true that some foreign intelligence activities by the Bureau are conducted, subject to the approval of the Attorney General, at the request of other intelligence agencies. As to these responsibilities, which comprise only a small part of the FBI's investigative activities, the oversight of the intelligence agencies requesting the cooperation of the Bureau, necessarily will entail review of the judgments and policies reflected in such agencies' requests for the assistance of the Bureau. Separate oversight jurisdiction would not seem to be necessary.

In drawing your attention to this basic difference between the primary investigatory activities of the Bureau and other agencies' intelligence activities, I do not mean to suggest that there are no similarities: certainly some of the methods and techniques utilized are similar. Nor do I mean to suggest that there are no differences between the Bureau's activities in the domestic security or counterintelligence areas and its activities in the more traditional criminal law areas: in the former the importance of timely information and the value of a predictive capability is often greater than in the latter. Rather, my point is that these activities are an integral part of the basic law enforcement function of the Bureau and that there is a problem if, for purposes of oversight, they are separated out and included within oversight of intelligence activities not law enforcement related. Put in another way, I think it is important that these activities be viewed both within and outside the Bureau in a law enforcement setting, and this is one reason why any system of oversight should deal with the Bureau as a unit. There is a further reason for oversight to be directed to the Bureau as a whole. The various investigatory functions of the Bureau are inseparably related. As a result, oversight which is directed at, for example, intelligence activities to the exclusion of law enforcement functions would have a disturbing potential for generating conflicting congressional guidance.

Our experience in developing guidelines governing the activities of the Bureau may be illustrative. The Department of Justice has been engaged for many months in the drafting of these guidelines. They are taking a long time to

develop, I am sorry to say, but I know they will be useful not only as guidelines but as the basis for statutory changes, executive orders and rules. This task has impressed upon us the interrelationship of these activities and of the policies that should control them. The very exercise of the guidelines and much of their value, is to see the Bureau's activities, when the guidelines are completed, as interrelated and imposing similar standards unless departures in standards are clearly justified. The effectiveness of congressional review of the guidelines will be maximized if they are seen as a whole rather than carved into segments for consideration by various committees, each with its special concerns and interests.

It should be clear that my objections to including these activities of the FBI in comprehensive intelligence oversight are not objections to the congressional review of these aspects of the Bureau's operation or the Department's supervision of it. I welcome and encourage such review whether the oversight is conducted by the committee designated with that general responsibility or by a committee reviewing intelligence policies of which the activities of the Bureau are an incidental part.

I have attempted to describe what I believe are some of the critical considerations that must enter the design of a system of oversight in this sensitive area, a system that will ensure that Congress can fulfill its constitutional responsibilities and respond to the vital interests of the public in protecting the security of the nation and, at the same time, protecting our citizens' rights. I know that, in describing the problems, I have not gone far in suggesting any very firm answers. In part that is because I am not sure I know what the best answers are. But in part, too, it is because you are better judges than I of the kinds of Congressional arrangements that are best suited to addressing the problems and concerns I have described. I would add only that oversight carries with it, as I am confident you know, a heavy responsibility—a responsibility that is properly yours under our Constitution, a responsibility that can be exercised, and must be, “judiciously, calmly, moderately.” As Judge Friendly said, “The adverbs are as important as the assertion.”

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., March 5, 1976.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: This is in response to your letter of February 18, 1976, requesting my views on certain questions which arose during my testimony before the Senate Government Operations Committee on February 6.

Question 1. Assuming that Congress has the authority to obtain confidential or classified information for the use of either House or for a particular committee or committees, does a committee have the authority on its own to disclose such information or is such action subject to the control of the parent House?

Answer. Generally speaking, Congressional committees owe their existence and all of their powers to the House which creates them. Under Article I, Section 5, Clause 2, of the Constitution, “Each House may determine the Rules of its Proceedings.” Likewise, each House, as a whole, may determine the jurisdiction and rules of proceedings of its committees. These rules may include procedures providing for a restriction on disclosure of information obtained by the committees to the public. Furthermore, it would appear that the parent House may modify committee rules at any time. *Cf. United States v. Ballin*, 144 U.S. 1, 5 (1892). In sum, it is my view that a Congressional committee has only such authority as is given it by the House which created it. The parent House has the power not only to direct its committees to be responsive to the public's need to know, but also to direct them to be discreet. In an area such as intelligence oversight, it is my view that the latter approach, as a matter of policy, is necessary. The mechanisms through which full House control over committee disclosure can be enforced are discussed in answer to question 4.

Question 2. Leaving aside the appropriations power if the Congress enacted a substantive law over the President's veto prohibiting a particular operation or category of operations, would such a law be constitutional?

Answer. It is difficult to give a categorical answer to this question because of the variety of circumstances encompassed by the phrase "particular operation or category of operations." My answer, then, must be one of approach rather than specific application. It was stated by Justice Jackson:

When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive presidential control in such a case only by disabling the Congress from acting upon the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system.

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 637-38 (1952) (Jackson, J., concurring). At the same time, a necessary corollary to this is that a Congressional enactment might attempt so to confine the sphere of Executive action as to disable the President from fulfilling the constitutional obligations imposed on him, and thus, as much as Executive action in derogation of Congressional responsibility, upset "the equilibrium established by our constitutional system." In this sense, there seems to me an area of exclusive presidential power, even apart from those matters confided expressly to Presidential authority alone. I doubt, however, that the area is susceptible of abstract and categorical definition. Instead, as I stated in my testimony, these problems are matters of degree. They can be resolved, and have been resolved, successfully on the whole, by accommodation founded on mutual respect and recognition by each branch of the responsibilities, and consequent authority, of the other.

Question 3. In what circumstances would a law which seeks to establish methodology and procedures to govern executive-legislative relations in the area of intelligence oversight raise constitutional questions?

Answer. Again, an attempt to answer so general a question in a reasoned fashion must suffer from "[t]he sheer multiplication of matters to which attention must be directed, and the resulting dispersion of thought, when a legal proposition is being formulated in the abstract." Hart and Wechsler, *The Federal Courts and the Federal System* (2d ed. 1973) 67. There are, however, two examples of particular relevance to the present inquiry, both of which were developed in the statement which I submitted to the Government Operations Committee on February 6. First, a law which, in seeking to establish methodology and procedures to govern Executive-Legislative relations in the area of intelligence oversight, seeks in any substantial degree to give to a Congressional committee day-to-day management functions with regard to intelligence operations would raise Separation of Powers questions. Second, any attempt legislatively to restrict proper exercise of Executive privilege, which was recognized in *United States v. Nixon*, 418 U.S. 683 (1974), as a necessary concomitant of the President's constitutional responsibilities, would, in my view, violate Separation of Powers principles.

Question 4. Under what circumstances might it be constitutionally permissible to impose restrictions upon the right of a member of Congress to disclose confidential or classified information in the exercise of his legislative function? Would penalties imposed by the Congress itself for a breach of an executive session by a member constitute an unconstitutional limitation on the speech and debate clause?

Article I, Section 5, Clause 3, of the Constitution states:

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

Thus, the Constitution leaves to each House the determination of what restrictions on disclosure of information by one of its Members in the course of legislative functions would be appropriate. Restriction of public disclosure of information received in executive session would appear so integral to the integrity of the Congress and its processes that it must be deemed encompassed in this discretion.¹

Enforcement of such restrictions is a separate question. Art. I, Section 6, Clause 1, of the Constitution provides that, with regard to "any Speech or Debate in either House," a Senator or Representative "shall not be questioned in any other

¹ The Supreme Court has stated that "the right to expel extends to all cases where the offense is such as in the judgment of the Senate is inconsistent with the trust and duty of a Member." *In re Chapman*, 166 U.S. 661, 669-70 (1897).

Place." It thus prohibits the Executive Branch from bringing prosecutions relating to the legislative functions of Members of Congress or their staffs. See *Gravel v. United States*, 408 U.S. 606 (1972). While Members may not be held accountable "in any other Place," Article I, Section 5, Clause 3, set out above, specifically anticipates that Members of Congress will be held responsible to their House for violations of its rules. Punishment by that House can, where appropriate, include expulsion. The "Speech and Debate Clause" would thus not shield a Member from punitive action by the House of which he is a Member for conduct constituting "a breach of an executive session."

I hope that these views are of some service to you.

Sincerely,

EDWARD H. LEVI,
Attorney General.

[Whereupon, at 11 a.m., the hearing was adjourned.]

APPENDIX

[S. 189, 94th Cong., 1st sess.]

A BILL Relating to the necessity of reorganizing certain departments and agencies of the executive branch, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) in order to provide the Congress with an improved means for formulating legislation (1) involving reorganizations of certain departments and agencies of the United States engaged in the surveillance of individuals for the purpose of assuring the protection of certain rights, and (2) involving the intergovernmental relationship between the United States and the States as such relationship involves the areas of surveillance of individuals and the need to protect such rights, there is established a joint committee of the Congress which shall be known as the Joint Committee on the Continuing Study of the Need to Reorganize the Departments and Agencies Engaged in Surveillance (hereafter referred to as the "joint committee"). The joint committee shall be composed of the following Members of Congress:

(1) eight Members of the Senate, four to be appointed by the majority leader of the Senate and four to be appointed by the minority leader of the Senate; and

(2) eight Members of the House of Representatives, four to be appointed by the majority leader of the House of Representatives and four to be appointed by the minority leader of the House of Representatives.

(b) The joint committee shall select a chairman and a vice chairman from among its members.

(c) Vacancies in the membership of the joint committee shall not affect the power of the remaining members to execute the functions of the joint committee and shall be filled in the same manner as in the case of the original appointment.

Sec. 2. It shall be the function of the joint committee—

(a) to make a continuing study of the need to reorganize the departments and agencies of the United States engaged in the investigation or surveillance of individuals, including, as a part of such study, the extent and the method of investigation or surveillance of individuals by any department, agency, or independent establishment of the United States Government as such investigation or surveillance relates to the right to privacy, the authority for, and the need for such investigation or surveillance, and the standards and guidelines used to protect the right to privacy and other constitutional rights of individuals;

(b) to make a continuing study of the intergovernmental relationship between the United States and the States insofar as that relationship involves the area of investigation or surveillance of individuals;

(c) as a guide to the several committees of the Congress dealing with legislation with respect to the activities of the United States Government involving the area of surveillance, to file reports at least annually, and at such other times as the joint committee deems appropriate, with the Senate and the House of Representatives, containing its findings and recommendations with respect to the matters under study by the joint committee, and, from time to time, to make such other reports and recommendations to the Senate and the House of Representatives as it deems advisable.

Sec. 3. Nothing in this Act shall give the joint committee, or any subcommittee thereof, jurisdiction to examine any activities of agencies and departments of the United States Government conducted outside the territorial boundaries of the United States: *Provided*, That the joint committee shall have authority to include within its reports recommendations concerning means to have the Congress oversee the activities of agencies and departments of the United States conducted outside the boundaries of the United States.

Sec. 4. In carrying out its functions, the joint committee shall, at least once each year, receive, subject to the exception provided for in section 3, the testimony, under oath, of a representative of every department, agent, instrumentality, or other entity of the Federal Government, which engages in investigations or surveillance of individuals, such testimony to relate to—

(a) the full scope and nature of the respective department's, agency's instrumentality's, or other entity's investigations or surveillance of individuals; and

(b) the criteria, standards, guidelines, or other general basis utilized by each such department, agency, instrumentality, or other entity in determining whether or not investigative or surveillance activities should be initiated, carried out, or maintained.

SEC. 5. (a) The joint committee, or any subcommittee thereof, is authorized, in its discretion, (1) to make expenditures, (2) to employ personnel, (3) to adopt rules respecting its organization and procedures, (4) to hold hearings, (5) to sit and act at any time or place, (6) to subpoena witnesses and documents, (7) with the prior consent of the agency concerned, to use on a reimbursable basis the services of personnel, information, and facilities of any such agency, (8) to procure printing and binding, (9) to procure the temporary services (not in excess of one year) or intermittent services of individual consultants, or organizations thereof, and to provide assistance for the training of its professional staff, in the same manner and under the same conditions as a standing committee of the Senate may procure such services and provide such assistance under subsections (i) and (j), respectively, of section 202 of the Legislative Reorganization Act of 1946, and (10) to take depositions and other testimony. No rule shall be adopted by the joint committee under clause (3) providing that a finding, statement, recommendation, or report may be made by other than a majority of the members of the joint committee then holding office.

(b) (1) Subpenas may be issued under the signature of the chairman of the committee or of any subcommittee, or by any member designated by such chairman, when authorized by a majority of the members of such committee, or subcommittee and may be served by any person designated by any such chairman or member.

(2) Each subpoena shall contain a statement of the committee resolution authorizing the particular investigation with respect to which the witness is summoned to testify or to produce papers, and shall contain a statement notifying the witness that if he desires a conference with a representative of the committee prior to the date of the hearing, he may call or write to counsel of the committee.

(3) Witnesses shall be subpoenaed at a reasonably sufficient time in advance of any hearing in order to give the witness an opportunity to prepare for the hearing and to employ counsel, should he so desire. The chairman of the joint committee or any member thereof may administer oaths to witnesses.

(c) The expenses of the joint committee shall be paid from the contingent fund of the Senate from funds appropriated for the joint committee, upon vouchers signed by the chairman of the joint committee or by any member of the joint committee authorized by the chairman.

(d) Members of the joint committee, and its personnel, experts, and consultants, while traveling on official business for the joint committee within or outside the United States, may receive either the per diem allowance authorized to be paid to Members of the Congress or its employees, or their actual and necessary expenses if any itemized statement of such expenses is attached to the voucher.

(e) (1) The District Court of the United States for the District of Columbia shall have original jurisdiction, without regard to the sum or value of the matter in controversy, of any civil action heretofore or hereafter brought by the joint committee to enforce or secure a declaration concerning the validity of any subpoena heretofore or hereafter brought by the joint committee, and the said district court shall have jurisdiction to enter any such judgment or decree in any such civil action as may be necessary or appropriate to enforce obedience to any such subpoena.

(2) The joint committee shall have authority to prosecute in its own name or in the name of the United States in the District Court of the United States for the District of Columbia and civil action heretofore or hereafter brought by the joint committee to enforce or secure a declaration concerning the validity of any subpoena heretofore or hereafter issued by such committee, and pray the said district court to enter such judgment or decree in said civil action as may be necessary or appropriate to enforce any such subpoena.

(3) The joint committee may be represented by such attorneys as it may designate in any action prosecuted by such committee under this title.

DISCLAIMER

SEC. 6. The provisions of this title shall not in any way limit or otherwise interfere with the jurisdiction or powers of any committee of the Senate, or the House of Representatives, or of Congress to request or require testimony or the submission or information from any representative of any department, agency, instrumentality, or other entity of the Federal Government.

[S. 317, 94th Cong., 1st sess.]

A BILL To establish a Joint Committee on Intelligence Oversight

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Joint Committee on Intelligence Oversight Act of 1975".

ESTABLISHMENT OF JOINT COMMITTEE ON INTELLIGENCE OVERSIGHT

SEC. 2. (a) There is hereby established a Joint Committee on Intelligence Oversight (hereinafter referred to as the "joint committee") which shall be composed of fourteen members appointed as follows:

(1) seven Members of the Senate, four to be appointed by the majority leader of the Senate and three to be appointed by the minority leader of the Senate; and

(2) seven Members of the House of Representatives, four to be appointed by the majority leader of the House of Representatives and three to be appointed by the minority leader of the House of Representatives.

(b) The Joint Committee shall select a chairman and a vice chairman from among its members at the beginning of each Congress. The vice chairman shall act in the place and stead of the chairman in the absence of the chairman. The chairmanship and the vice chairmanship shall alternate between the Senate and the House of Representatives with each Congress. The chairman during each even-numbered Congress shall be selected by the Members of the House of Representatives on the joint committee from among their number and the chairman during each odd-numbered Congress shall be selected by the Members of the Senate on the joint committee from their number. The vice chairman during each Congress shall be chosen in the same manner from that House of Congress other than the House of Congress of which the chairman is a Member.

(c) A majority of the members of the joint committee shall constitute a quorum for the transaction of business, except that the joint committee may fix a lesser number as a quorum for the purpose of taking testimony. Vacancies in the membership of the joint committee shall not affect the power of the remaining members to execute the functions of the joint committee and shall be filled in the same manner as in the case of the original appointment.

(d) Service of a Senator as a member or as chairman of the joint committee shall not be taken into account for the purposes of paragraph 6 of rule XXV of the Standing Rules of the Senate.

DUTIES OF THE JOINT COMMITTEE

SEC. 3. (a) It shall be the duty of the joint committee to conduct a continuing study and investigation of the activities and operations of (1) the Central Intelligence Agency, (2) the Federal Bureau of Investigation, Department of Justice, (3) the United States Secret Service, (4) the Defense Intelligence Agency, Department of Defense, (5) the National Security Agency, and, (6) all other departments and agencies of the Federal Government insofar as the activities and operations of such other departments and agencies pertain to intelligence gathering or surveillance of persons; and to consider proposals for the improvement and reorganization of agencies and departments of the Federal Government within the jurisdiction of the joint committee.

(b) The Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Director of the Secret Service, the Director of the Defense Intelligence Agency, and the Director of the National Security Agency shall keep the joint committee fully and currently informed with respect to all of the activities of their respective organizations, and the heads of all other departments and agencies of the Federal Government conducting intelligence activities or operations or the surveillance of persons shall keep the joint committee fully and currently informed of all intelligence and surveillance activities and operations carried out by their respective departments and agencies. The joint committee shall have authority to require from any department or agency of the Federal Government periodic written reports regarding activities and operations within the jurisdiction of the joint committee.

(c) (1) All bills, resolutions, and other matters in the Senate or the House of Representatives relating primarily to the functions of the Central Intelligence Agency, the Federal Bureau of Investigation, the United States Secret Service, the Defense Intelligence Agency, the National Security Agency, or to intelligence

or surveillance activities or operations of any other department or agency of the Federal Government shall be referred to the joint committee.

(2) No funds may be appropriated for the purpose of carrying out any intelligence or surveillance activity or operation by any office, or any department or agency of the Federal Government, unless such funds for such activity or operation have been specifically authorized by legislation enacted after the date of enactment of this Act.

(3) No bill or resolution, and no amendment to any bill or resolution, and no matter contained in any bill or resolution, in either House, dealing with any matter which is within the jurisdiction of the joint committee shall be considered in that House unless it is a bill or resolution which has been reported by the joint committee of that House (or from the consideration of which such committee has been discharged) or unless it is an amendment to such a bill or resolution. Nothing in this subsection shall be construed to deprive any committee of either House from exercising legislative oversight with respect to intelligence and surveillance activities and operations related to the jurisdiction of such committee.

(4) Members of the joint committee who are Members of the Senate shall from time to time report to the Senate, and members of the joint committee who are Members of the House of Representatives shall from time to time report to the House, by bill or otherwise, their recommendations with respect to matters within the jurisdiction of their respective Houses and which are referred to the joint committee or otherwise within the jurisdiction of the joint committee.

ADMINISTRATIVE POWERS

SEC. 4. (a) The joint committee, or any subcommittee thereof, is authorized, in its discretion to make expenditures; to employ personnel; to adopt rules respecting its organization and procedures; to hold hearings; to sit and act at any time or place; to subpoena witnesses and documents; with the prior consent of the Federal department or agency concerned, to use on a reimbursable basis the services of personnel, information, and facilities of any such department or agency; to procure printing and binding; to procure the temporary services (not in excess of one year) or intermittent services of individual consultants, or organizations thereof, and to provide assistance for the training of its professional staff, in the same manner and under the same conditions as a standing committee of the Senate may procure such services and provide such assistance under subsections (i) and (j), respectively, of section 202 of the Legislative Reorganization Act of 1946; and to take depositions and other testimony.

(b) Subpenas may be issued over the signature of the chairman of the joint committee or by any member designated by him or the joint committee, and may be served by such person as may be designated by such chairman or member. The chairman of the joint committee or any member thereof may administer oaths to witnesses. The provisions of section 102 through 104 of the Revised Statutes (2 U.S.C. 192-194) shall apply in the case of any failure of any witness to comply with a subpoena or to testify when summoned under authority of this subsection.

CLASSIFICATION OF INFORMATION

SEC. 5. The joint committee may classify information originating within the committee in accordance with standards used generally by the executive branch for classifying restricted data or defense information.

RECORDS OF JOINT COMMITTEE

SEC. 6. The joint committee shall keep a complete record of all joint committee actions, including a record of the votes on any question on which a record vote is demanded. All records, data, charts, and files of the joint committee shall be the property of the joint committee and shall be kept in the office of the joint committee or such other places as the joint committee may direct.

EXPENSES OF JOINT COMMITTEE

SEC. 7. The expenses of the joint committee shall be paid from the contingent fund of the Senate from funds appropriated for the joint committee, upon vouchers signed by the chairman of the joint committee or by any member of the joint committee authorized by the chairman.

[S. Con. Res. 4, 94th Cong., 1st sess.]

CONCURRENT RESOLUTION To establish a Joint Committee on Information and Intelligence

Resolved by the Senate (the House of Representatives concurring), That (a) there is hereby established a joint congressional committee to be known as the Joint Committee on Information and Intelligence (referred to in this concurrent resolution as the "joint committee"), to be composed of seven Members of the Senate appointed by the President of the Senate, and seven Members of the House of Representatives appointed by the Speaker of the House of Representatives. In each instance not more than four members shall be appointed from the same political party.

(b) Vacancies in the membership of the joint committee shall not affect the power of the remaining members to execute the functions of the joint committee, and shall be filled in the same manner as in the case of the original selection.

(c) The joint committee shall select a chairman and a vice chairman from among its members at the beginning of each Congress. The vice chairman shall act in the place and stead of the chairman in the absence of the chairman. The chairmanship shall alternate between the Senate and the House of Representatives with each Congress and the chairman shall be selected by the members of the joint committee from the House entitled to the chairmanship. The vice chairman shall be selected in the same manner as the chairman, except that the vice chairman shall be selected by the members of the joint committee from the House not entitled to the chairmanship.

(d) The joint committee may appoint and fix the compensation of such experts, consultants, technicians, and clerical and stenographic assistants as it deems necessary and advisable.

(e) The joint committee is authorized to utilize the services, information, facilities, and personnel of the executive departments and establishments of the United States.

(f) The joint committee is authorized to classify information originating within the joint committee in accordance with standards used generally by the executive branch of the Federal Government for classifying restricted data or defense information.

(g) The joint committee shall keep a complete record of all committee actions, including a record of the votes on any question in which a record vote is demanded. All committee records, data, charts, and files shall be the property of the joint committee and shall be kept in the offices of the joint committee, or such other places as the joint committee may direct, under such security safeguards as the joint committee shall determine to be in the interest of national security.

(h) The joint committee may make such rules respecting its organization and procedures as it deems advisable, but no measure or recommendation shall be reported from the joint committee unless a majority of the members thereof assent.

SEC. 2. (a) The joint committee shall make continuing studies of—

(1) the activities of each information and intelligence agency of the United States,

(2) the relationships between information and intelligence agencies of the United States and United States-based corporations and the effect of such relationships on United States foreign policy and intelligence operations abroad,

(3) the problems relating to information and intelligence programs, and

(4) the problems relating to the gathering of information and intelligence affecting the national security, and its coordination and utilization by the various departments, agencies, and instrumentalities of the United States.

(b) Each information and intelligence agency of the United States shall give to the joint committee such information regarding its activities as the committee may require. Such information shall include data with respect to the amounts, purposes, and recipients of expenditures made by each such agency.

(c) As used in this joint resolution, the term "information and intelligence agency of the United States" means the United States Information Agency, the Central Intelligence Agency, and any unit within any of the executive departments or agencies of the United States conducting information or intelligence activities (including any unit within the Departments of State, Defense, Army, Navy, and Air Force, including the operation of the Federal Bureau of Investigation).

SEC. 3. (a) All bills, resolutions, and other matters in the Senate and House of Representatives relating primarily to any information and intelligence agency

of the United States or its activities shall be referred to the joint committee. The joint committee shall make an annual report to both Houses of Congress and shall make such additional reports as it deems necessary in carrying out its duties. The annual report shall include recommendations with respect to matters within the jurisdiction of their respective Houses which are--

- (1) referred to the joint committee, or
 - (2) otherwise within the jurisdiction of the joint committee.
- (b) In carrying out its duties under this joint resolution, the joint committee, or any duly authorized subcommittee thereof, is authorized to hold such hearings, to sit and act at such times and places, to require, by subpoena or otherwise, the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, to take such testimony, to procure such printing and binding, and to make such expenditures as it deems advisable. Subpoenas may be issued over the signature of the chairman of the joint committee, or by any member designated by him, or by the joint committee, and may be served by any person designated by such chairman or member.

Sec. 4. The expenses of the joint committee shall be paid from the contingent fund of the Senate upon vouchers signed by the chairman.

[S. 2865, 94th Cong., 2d sess.]

A BILL To establish a Standing Committee of the Senate on Intelligence Oversight, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Committee on Intelligence Oversight Act of 1976".

Sec. 2. Sections 3 through 8 and sections 10 and 11 of this Act are enacted--

- (1) as an exercise of the rulemaking power of the Senate, and as such they shall be considered as part of the rules of the Senate, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and
- (2) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner, and to the same extent as in the case of any other rule of the Senate.

Sec. 3. Rule XXIV of the Standing Rules of the Senate is amended by adding at the end thereof a new paragraph as follows:

"3. (a) The Committee on Intelligence Oversight shall be composed of the following members:

"(1) The majority leader of the Senate.

"(2) The minority leader of the Senate.

"(3) The chairman and the ranking member of the minority party of the Committee on Appropriations, the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Government Operations.

"(b) At the beginning of each Congress, the members of the Committee on Intelligence Oversight who are members of the majority party of the Senate shall select the chairman of such committee and the members of such committee who are members of the minority party of the Senate shall select the vice chairman of such committee."

Sec. 4. (a) Subparagraph (d) (1) of paragraph 1 of rule XXV of the Standing Rules of the Senate is amended by striking out the period at the end of such subparagraph and inserting in lieu thereof a comma and the following: "except matters described in subparagraph (s)."

(b) Subparagraph (i) 1 of paragraph 1 of rule XXV of the Standing Rules of the Senate is amended by striking out the period at the end of such paragraph and inserting in lieu thereof a comma and the following: "except matters described in subparagraph (s)."

(c) Subparagraph (1) 9 of paragraph 1 of rule XXV of the Standing Rules of the Senate is amended by striking out the comma after the word "espionage" and inserting in lieu thereof the following: "(except matters described in subparagraph (s))."

Sec. 5. (a) Paragraph 1 of rule XXV of the Standing Rules of the Senate is amended by adding at the end thereof the following new subparagraph:

"(s) Committee on Intelligence Oversight, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following:

"(A) The Central Intelligence Agency.

"(B) The Defense Intelligence Agency.

"(C) The National Security Agency.

"(D) Intelligence activities of all other departments and agencies of the Government, including, but not limited to, the intelligence activities of the Army, Navy, and Air Force; the Department of Justice; the Department of State; and the Department of the Treasury."

(b) Paragraph 3 of rule XXV of the Standing Rules of the Senate is amended by inserting

"Intelligence oversight----- 10"

immediately below

"District of Columbia----- 7".

(c) Paragraph 6 of rule XXV of the Standing Rules of the Senate is amended by adding at the end thereof the following new subparagraph:

"(1) For the purposes of this paragraph, service of a Senator as a member of the Committee on Intelligence Oversight shall not be taken into account."

SEC. 6. (a) (1) Subject to the provisions of paragraph (2), no document, record, paper, testimony, or other information in the possession of the Committee on Intelligence Oversight of the Senate shall be disclosed by any member of such committee or by any employee or agent of such committee to any person not authorized by such committee to receive such information unless six or more members of such committee (including at least two from the majority party and two from the minority party of the Senate) have voted to disclose such information to such person.

(2) No document, record, paper, testimony, or other information in the possession of the Committee on Intelligence Oversight of the Senate shall be disclosed by any member of such committee or by any employee or agent of such committee, except to the extent authorized by such committee, if such information was made available to such committee by the executive branch in accordance with section 602 of the Foreign Assistance Act of 1961 unless eight or more members of such committee have voted to disclose such information and the Senate has agreed to a resolution expressing approval of the proposed disclosure of such information by such committee.

(3) For purposes of paragraphs (1) and (2) of this subsection, no vote of any member may be cast by proxy.

(b) Whenever any document, record, paper, testimony, or other information is submitted by the executive branch to the Committee on Intelligence Oversight of the Senate, including any information referred to in subsection (a), with instructions that, because of national security considerations, such information not be disclosed to any person not a member or employee of such committee, such committee shall not disclose such information to any person not a member or employee of such committee unless (1) the disclosure of such information has been approved by a unanimous vote of all members of such committee, (2) such committee has requested the approval of the Senate for the disclosure of such information, and (3) the Senate has approved the disclosure of such information by a vote of at least three-fifths of the Senators duly chosen and sworn.

SEC. 7. (a) A member of the Committee on Intelligence Oversight of the Senate shall be automatically suspended from membership on such committee in any case in which two or more members of such committee (including at least one from the majority party and one from the minority party of the Senate) have alleged in writing to the clerk of such committee that such member has violated section 6 of this Act regarding the unauthorized disclosure of information.

(b) The suspension of any member of the Senate from membership on the Committee on Intelligence Oversight shall be automatically referred to the Select Committee on Standards and Conduct of the Senate together with a copy of the allegations referred to in subsection (a). Such select committee shall conduct an investigation of such allegations and shall submit a report containing the results of such investigation, together with such recommendations as it deems appropriate, including, but not limited to, recommendations for expulsion from the Senate, within sixty days after the date on which a copy of such allegations has been submitted to such select committee.

(c) Any member of the Committee on Intelligence Oversight of the Senate who has been suspended from membership on such committee shall remain

suspended until such time as the Senate directs that such member be reinstated as a member of such committee.

Sec. 8. (a) Every individual employed by the Committee on Intelligence Oversight of the Senate and every other individual (other than a Member of Congress) given access to any document, record, paper, testimony, or other information in the possession of such committee which the committee has not ordered to be publicly disclosed shall be required to have a background investigation check. The chairman and vice chairman of such committee shall determine the type of clearance each such employee or other individual shall be required to have.

(b) All employees of the Committee on Intelligence Oversight of the Senate shall be employed subject to the approval of both the chairman and vice chairman of such committee.

(c) No individual shall be employed by the Committee on Intelligence Oversight of the Senate unless he shall pledge in writing never to disclose the contents of any document, record, paper, testimony, or other information in the possession of such committee unless such committee has approved the disclosure of such information.

(d) Any employee of the Committee on Intelligence Oversight of the Senate who violates his pledge made under subsection (c), as determined by any member of such committee or the staff director thereof, shall be immediately dismissed from his employment. In any case in which an employee of the Committee on Intelligence Oversight has been dismissed from his service with such committee because of a violation of his pledge made under subsection (c), such committee shall refer the matter to the Attorney General of the United States for appropriate action if the committee determines criminal prosecution may be warranted.

Sec. 9. Any employee of the Committee on Intelligence Oversight of the Senate who is guilty of having violated his pledge made under section 8(c) shall be guilty of a felony and shall be subject to a fine of not to exceed \$100,000 and imprisonment not to exceed twenty years, or both.

Sec. 10. (a) (1) The Committee on Intelligence Oversight of the Senate shall conduct a study and investigation to determine the feasibility and advisability of having a consolidated intelligence budget in which funds for all intelligence activities of the United States are contained.

(2) Such committee shall submit the results of such study and investigation to the Senate within eighteen months after the date of enactment of this Act together with such comments and recommendations as it deems appropriate.

(b) (1) The Committee on Intelligence Oversight shall also conduct a study and investigation to determine the feasibility and advisability of a general reorganization of the intelligence community of the United States with particular emphasis on the question of establishing a purely analytical office of intelligence in the executive office of the White House.

(2) Such committee shall submit the results of such study and investigation to the Senate within twenty-four months after the date of enactment of this Act together with such comments and recommendations as it deems appropriate.

Sec. 11. All documents, records, papers, and other information in possession of the Committee on Intelligence Oversight of the Senate shall be kept in the offices of such committee, or in such other places as such committee may direct, under such security safeguards as such committee shall determine in the interest of national security.

Sec. 12. The Director of the Central Intelligence Agency, the Director of the Defense Intelligence Agency, and the Director of the Federal Bureau of Investigation shall each submit a report annually to the Committee on Intelligence Oversight of the Senate. Such reports shall review the operations of the agency or bureau, as the case may be, during the past year, including, but not limited to a review of the Communist activities with which such agency or bureau was concerned during such year. Such records shall be unclassified and shall be made available to the public. Nothing herein shall be construed as requiring the disclosure in such reports of the means of individuals engaged in intelligence activities for the United States or the sources of information on which such reports are based.

[S. 2893, 94th Cong., 2d sess.]

A BILL To establish a Standing Committee of the Senate on Intelligence Activities, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Intelligence Oversight Act of 1976".

SEC. 2. It is the purpose of this Act to establish a new standing committee of the Senate, to be known as the Committee on Intelligence Activities, to oversee and make continuing studies of the intelligence activities and programs of the United States Government. In carrying out this purpose, the Committee on Intelligence Activities shall make every effort to assure that the appropriate departments and agencies of the United States provide informed and timely intelligence necessary for the executive and legislative branches to make sound decisions affecting the security and vital interests of the Nation. It is further the purpose of this Act to provide vigilant legislative oversight over the intelligence activities of the United States to assure that such activities are in conformity with the Constitution and laws of the United States.

SEC. 3. Sections 4 through 12 of this Act are enacted—

(1) as an exercise of the rulemaking power of the Senate, and as such they shall be considered as part of the Standing Rules of the Senate, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner, and to the same extent as in the case of any other rule of the Senate.

SEC. 4. Rule XXIV of the Standing Rules of the Senate is amended by adding at the end thereof a new paragraph as follows:

"3. (a) Five members of the Committee on Intelligence Activities shall be appointed by the majority leader of the Senate and four shall be appointed by the minority leader of the Senate.

"(b) No Senator may serve on the Committee on Intelligence Activities for more than six years, exclusive of service by any Senator on such committee during the Ninety-fourth Congress. To the greatest extent practicable, the requirements of this section shall be met by selecting three Senators to serve on such committee at the beginning of the Ninety-sixth Congress and each Congress thereafter who did not serve on such committee during the preceding Congress.

"(c) At the beginning of each Congress, the members of the Committee on Intelligence Activities appointed by the majority leader shall select a chairman and the members of such committee appointed by the minority leader shall select a vice chairman. The vice chairman shall act in the place and stead of the chairman in the absence of the chairman."

SEC. 5. (a) Paragraph 1 of rule XXV of the Standing Rules of the Senate is amended by adding at the end thereof the following new subparagraph:

"(s) (1) Committee on Intelligence Activities, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following:

"(A) The Central Intelligence Agency and the Director of Central Intelligence.

"(B) Intelligence activities of all other departments and agencies of the Government, including, but not limited to, the intelligence activities of the Defense Intelligence Agency, the National Security Agency, and other agencies of the Department of Defense; the Department of State; the Department of Justice; and the Department of the Treasury.

"(C) The organization or reorganization of any department or agency of the Government to the extent that the organization or reorganization relates to a function or activity involving intelligence activities.

"(D) Authorizations for appropriations for the following:

"(i) The Central Intelligence Agency.

"(ii) The Defense Intelligence Agency.

"(iii) The National Security Agency.

"(iv) The intelligence activities of other agencies and subdivisions of the Department of Defense.

"(v) The intelligence activities of the Department of State.

"(vi) The intelligence activities of the Federal Bureau of Investigation, including all activities of the Domestic Intelligence Division.

"(vii) Any department, agency, or subdivision which is the successor to any agency named in item (i), (ii), or (iii); and the activities of any department, agency, or subdivision which is the successor to any department or bureau named in item (iv), (v), or (vi) to the extent that the activities of such successor department, agency, or subdivision are activities described in item (iv), (v), or (vi).

"(2) The Committee on Intelligence Activities shall have exclusive jurisdiction over all matters described in subclauses (A) and (D) of clause (1). Nothing in this Act shall repeal or diminish the jurisdiction of other standing committees of the Senate as to the matters described in subclauses (B) and (C) of clause (1). To the extent that the jurisdiction of other standing committees of the Senate include the matters described in subclauses (B) and (C) of clause (1), the jurisdiction of such other standing committees shall be concurrent with that of the Committee on Intelligence Activities."

(b) Paragraph 3 of Rule XXV of the Standing Rules of the Senate is amended by inserting:

"Intelligence activities----- 9"

immediately below

"District of Columbia----- 7".

(c) Paragraph 6 of rule XXV of the Standing Rules of the Senate is amended by adding at the end thereof the following new subparagraph:

"(i) For the purposes of this paragraph, service of a Senator as a member of the Committee on Intelligence Activities shall not be taken into account."

SEC. 6. The Committee on Intelligence Activities of the Senate, for the purposes of accountability to the Senate, shall make regular and periodic reports to the Senate on the nature and extent of the intelligence activities of the various departments and agencies of the United States. Such committee shall promptly call to the attention of the Senate or to any other appropriate committee or committees of the Senate any matters deemed by the Committee on Intelligence Activities to require the immediate attention of the Senate or such other committee or committees. In making such reports, the committee shall proceed in such manner as will protect national security.

SEC. 7. No member of the Committee on Intelligence Activities of the Senate and no employee of such committee shall disclose, except in closed session of the Senate, any information in the possession of or obtained by such committee relating to the activities of the Central Intelligence Agency or the intelligence activities of any other department or agency of the United States, unless authorized by such committee.

SEC. 8. (a) No person may be employed as a professional staff member of the Committee on Intelligence Activities of the Senate or be engaged by contract or otherwise to perform professional services for or at the request of such committee for a period totaling more than six years.

(b) No employee of such committee or any person engaged by contract or otherwise to perform services for or at the request of such committee shall be given access to any classified information by such committee unless such employee or person has (1) agreed to be bound by the rules of the Senate and of such committee as to the security of such information during and after the period of his employment or contractual agreement with such committee; and (2) received an appropriate security clearance as determined by such committee in consultation with the Director of Central Intelligence. The type of security clearance to be required in the case of any such employee or person shall, within the determination of such committee in consultation with the Director of Central Intelligence, be commensurate with the sensitivity of the classified information to which such employee or person will be given access by such committee.

SEC. 9. The Committee on Intelligence Activities of the Senate shall formulate and carry out such rules and procedures as it deems necessary to prevent the disclosure, without the consent of the person or persons concerned, of information in the possession of such committee which unduly infringes upon the privacy or which violates the constitutional rights of such person or persons. Nothing herein shall be construed to prevent such committee from publicly disclosing any such information in any case in which such committee determines the national interest in the disclosure of such information clearly outweighs any infringement on the privacy of any person or persons.

SEC. 10. (a) The Committee on Intelligence Activities of the Senate may disclose any information upon the committee's determination that the national interest would be served by such disclosure. In any case in which such committee decides to disclose any information requested to be kept secret by the President, such committee shall notify the President to that effect. Such committee may not disclose such information until the expiration of ten days following the day on which notice is transmitted to the President. If (1) prior to disclosure of such information the President submits a written certification to the Senate through such committee stating his opinion, and the reasons therefor, that the threat to national security posed by such disclosure outweighs any public interest in disclosure and that the question of disclosure is of such importance to the vital interests of the United States that it requires a decision by the full Senate, and (2) after receipt of a certification by the President made pursuant to this subsection, the Committee on Intelligence Activities decides to refer the question of disclosure of such information to the Senate, such information may not be disclosed unless the Senate agrees to a resolution approving the disclosure of such information, or the Senate agrees to a resolution referring the matter to the Committee on Intelligence Activities for final disposition, and the Committee on Intelligence Activities thereafter approves the disclosure of such information.

(b) Any question referred to the Senate by the Committee on Intelligence Activities pursuant to subsection (a) shall be disposed of by the Senate by a vote on such question within three calendar days following the day on which the question is reported to the Senate, excluding days on which the Senate is not in session.

SEC. 11. The Committee on Intelligence Activities of the Senate is authorized to permit any personal representative of the President, designated by the President to serve as a liaison to such committee, to attend any closed meeting of such committee.

SEC. 12. Upon expiration of the Select Committee on Governmental Operations With Respect to Intelligence Activities, established by S. Res. 21, Ninety-fourth Congress, all records, files, documents, and other materials in the possession, custody, or control of such committee shall be transferred to the Committee on Intelligence Activities.

SEC. 13. (a) Notwithstanding any other provision of law, it shall be the duty of the head of each department and agency of the United States to keep the Committee on Intelligence Activities of the Senate fully and currently informed with respect to intelligence activities which are the responsibility of or engaged in by such department or agency.

(b) Notwithstanding any other provision of law, it shall also be the duty of the head of any department or agency of the United States involved in any intelligence activities to furnish any information or document in its possession, custody, or control, or witness in its employ, whenever requested by the Committee on Intelligence Activities of the Senate with respect to any matter within such committee's jurisdiction.

(c) No department or agency of the United States may engage in, directly or indirectly, any significant covert or clandestine operation in foreign countries unless and until the Committee on Intelligence Activities of the Senate has been fully informed of the proposed activity by the head of the department or agency concerned prior to the time such activity is initiated. This subsection shall not apply to activities intended solely for collecting necessary intelligence.

(d) The provisions of subsection (c) of this section shall not apply during military operations initiated by the United States under a declaration of war by the Congress or an exercise of powers by the President under the War Powers Resolution.

SEC. 14. No funds may be appropriated for any fiscal year beginning after September 30, 1976, to or for the use of any department or agency of the United States to carry out any of the following activities, unless such funds have been previously authorized by law to carry out such activity for such fiscal year.

- (1) The activities of the Central Intelligence Agency.
- (2) The activities of the Defense Intelligence Agency.
- (3) The activities of the National Security Agency.
- (4) The intelligence activities of other agencies and subdivisions of the Department of Defense.
- (5) The intelligence activities of the Department of State.
- (6) The intelligence activities of the Federal Bureau of Investigation, including all activities of the Domestic Intelligence Division.

(7) Any activity of any department, agency, or subdivision which is the successor to any department, agency, or subdivision named in clause (1) through (6) to the extent that such activity is one described in such clauses.

SEC. 15. As used in this Act, the term "intelligence activities" means (1) the collection, analysis, production, dissemination, or use of information affecting the relations of the United States with any foreign government, political group, party, military force, movement or other association, and other activity which is in support of such activities; (2) activities taken to counter similar activities directed against the United States; (3) covert or clandestine activities affecting the relations of the United States with any foreign government, political group, party, military force, movement or other association; (4) the collection, analysis, production, dissemination, or use of information about activities of persons within the United States, its territories and possessions, or nationals of the United States abroad who pose, or may be considered by any department agency, bureau, office, division, instrumentality, or employee of the United States to pose a threat to the security of the United States, and covert or clandestine activities directed against such persons. Such term does not include tactical foreign military intelligence serving no national policymaking function.

SEC. 16. Nothing in this Act shall be construed as constituting an authorization for the conduct of any activity not otherwise authorized by law.

SEC. 17. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the validity of the remaining provisions and the application of such provisions to other persons or circumstances shall not be affected thereby.

CENTRAL INTELLIGENCE AGENCY,
Washington, D.C., February 13, 1976.

HON. ABRAHAM RIBICOFF,
Chairman, Committee on Government Operations,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views and recommendations of this Agency on S. 2865 and S. 2893, bills "To establish a Standing Committee of the Senate on Intelligence Activities, and for other purposes."

We are formulating our position with respect to these bills, and will send you our report as soon as it has been appropriately coordinated within the Executive branch.

Sincerely,

GEORGE L. CARY,
Legislative Counsel.

CENTRAL INTELLIGENCE AGENCY,
Washington, D.C., January 23, 1976.

HON. ABRAHAM RIBICOFF,
Chairman, Committee on Government Operations,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: I am pleased to provide my views, pursuant to the Committee's requests, on three bills which would alter the existing pattern of congressional oversight of the Central Intelligence Agency. All three bills would establish a permanent joint committee which would, alternatively:

(a) exercise legislative oversight of all Federal information and intelligence agencies (S. Con. Res. 4);

(b) study the extent and methods of investigation or surveillance of individuals by any Federal instrumentality within the United States, and make recommendations on the organization of these agencies (S. 189); or

(c) exercise legislative oversight of the Federal agencies comprising the intelligence community, the Secret Service, plus any surveillance or intelligence activities of any other Federal department or agency (S. 317).

Since the manner of exercising oversight of CIA is a matter for the Congress to determine, these comments are limited to those considerations which impact upon our foreign intelligence capabilities—chiefly the security of sensitive intelligence information.

Consistent with this concern, I believe oversight of CIA should be concentrated exclusively in the minimum number of committees required to effectively conduct it. At present, the Agency has four regular oversight committees: subcommittees of the Senate and House Armed Services and Appropriations Committees exercise traditional legislative and appropriations review. CIA reports fully on all its activities to these four committees. This responsibility goes beyond merely responding to inquiries; it is the Agency's policy and practice to bring any matter of possible interest to the committees' attention. Also, pursuant to the Foreign Assistance Act of 1974, CIA's non-intelligence gathering activities are reported to the Senate Committee on Foreign Relations and House Committee on International Relations in addition to the regular oversight committees.

During the past year there has been an unprecedented trend toward the proliferation of oversight throughout the Congress. The creation of the select committees brought to eight the number of committees with a charter to be informed of CIA activities. Nevertheless, since then at least 11 other committees or subcommittees have demanded access to operational information. Congress could once boast that its record in protecting sensitive CIA information was exemplary. Until fairly recently, there had not been a major leak from Congress of CIA information. The reason is not difficult to discern: CIA operational information was tightly restricted to members of the oversight subcommittees. However, the past year has witnessed a shattering of Congress' formerly fine record of protecting sensitive national security information. The correlation should be apparent to all: the more widespread the dissemination of sensitive CIA information throughout the Congress, the greater the risk of disclosure. Expressly excluding other committees from access to CIA operational information should rectify the present situation regarding leaks, and would not impair good oversight.

Concentrated committee jurisdiction will work to the advantage of both the Congress and the Agency. Modern intelligence is a many-faceted process, but in the last analysis it is an integrated whole. It cannot be intelligently comprehended by investigating and dissecting its parts separately. Concentrated, rather than fragmented, oversight will enable Members to build up expertise on the intelligence agencies, an asset not easily acquired. Congress will have knowledgeable Members in these responsible positions, Members whose knowledge of past programs will enable them to make independent judgments on the probable effectiveness of intelligence community proposals.

This same expertise will also work to the advantage of the Agency, as we will gain the advice and counsel of knowledgeable Members and the resulting secure environment will facilitate the freer flow of sensitive information.

In addition, I urge the Committee to establish enforceable rules and sanctions to govern the handling of CIA information. These rules should have two aspects. First, CIA operational information should be limited to members of the oversight committees and designated staff. Second, any injunctions of secrecy attached to such sensitive information as a result of constitutional or statutory responsibilities must be fully respected and enforced.

I am not alone in calling for enforceable rules and procedures. In the 93rd Congress, the House Select Committee on Committees studied the problems of protecting information on intelligence operations. It found that the dangers of the real world are such as to require very close protection of certain sensitive intelligence information. It strongly recommended that the House take the initiative to create an orderly set of rules governing the receipt, use, storage, and dissemination of such information. Unfortunately, no action or recommendation has been forthcoming.

One specific proposal in S. 317 is deserving of special comment. Section (c) (2) of the bill provides that:

"No funds may be appropriated for the purpose of carrying out any intelligence or surveillance activity or operation by any office, or any department or agency of the Federal Government, unless such funds for such activity or operation have been specifically authorized by legislation enacted after the date of enactment of this Act."

One purpose of Section 8 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j) was to eliminate the requirement of an annual authorization, in the interest of protecting against public disclosure of the Central Intelligence Agency budget. Acceptance of Section (c) (2) of S. 317 would vitiate this principle. I am convinced that disclosure of intelligence budgets would provide potential adversaries with significant insight into the nature and scope of our national foreign intelligence effort, particularly where analysis of year-to-year

fluctuations in the budget are possible. In addition, publication of any intelligence budget figure will lead immediately to public discussion of precisely which of our intelligence activities were covered by the figure and which were not. The ensuing discussion will lead to the disclosure of many sensitive and critically important intelligence programs and activities. The history of disclosure of Atomic Energy Commission budget materials and related information by both the Executive Branch and the Congress indicates that publication of any figure with respect to intelligence would quickly stimulate pressures for further disclosure and probes by various sectors into the nature of the figure and its component elements.

Both House of Congress recently endorsed, by greater than 60 percent margins, the continuing necessity of a secret intelligence budget. In June 1974 the Senate, by a vote of 55-33, defeated a move to disclose the intelligence community budget. In October 1975 the House defeated an amendment to the Fiscal 1976 Defense Appropriations Bill to disclose the CIA budget total. The House vote was 267-147. As you know, all of CIA's appropriation is contained in the Defense Appropriations Bill and the Agency's budget is subject to intensive scrutiny by the Appropriations and Armed Services Committees of both Houses. The committee review of the CIA budget inherent in an authorization requirement is now accomplished in a manner meeting Congress' expressed desire to protect intelligence budget figures from disclosure.

In summary, Mr. Chairman, the Central Intelligence Agency is prepared to work with Congress in any manner Congress chooses to organize itself to exercise its constitutional responsibilities. However, in order to assist this Agency's efforts to fulfill its statutory functions, oversight must be concentrated exclusively in the minimum number of committees necessary to effectively conduct it. Rules and enforceable sanctions limiting access to CIA operational information to members and designated staff of the oversight committees, and procedures for the continuing protection of such sensitive information are also required.

The Office of Management and Budget has advised there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

W. E. COLBY, *Director.*

U.S. INFORMATION AGENCY,
Washington, D.C., February 2, 1976.

HON. ABRAHAM A. RIBICOFF,
Chairman, Committee on Government Operations,
U.S. Senate.

DEAR MR. CHAIRMAN: This will reply to your letters requesting the views of the United States Information Agency on S. Con. Res. 4, to establish a Joint Committee on Information and Intelligence; S. 317, to establish a Joint Committee on Intelligence Oversight; and S. 189, to establish a Joint Committee on the Continuing Study of the Need to Reorganize the Departments and Agencies Engaging in Surveillance.

S. Con. Res. 4, if needed, would have grave repercussions upon fulfillment of the Agency's mission which is to disseminate to foreign audiences open, attributed information about the United States and its policies. We do not engage in intelligence-gathering or other covert activities.

We have always been sensitive to the fact that there are languages (primarily those of Slavic and Latin origin) in which the word "information" connotes intelligence-gathering or other covert activity, and we have always sought to make it clear, in those countries and in all others, that the Agency's goals are openly informational and cultural. Despite every precaution, there have been repeated attempts by hostile propagandists to brand USIA as an instrument of subversion or secret intelligence-gathering.

Given this background, it would be most unfortunate for the Congress of the United States to give even indirect support to the erroneous concept that "information" and "intelligence" are mingled or in any sense related. The credibility of our programs would be harmed; the accusations of our critics abroad would gain credence. Our longstanding efforts to merit the confidence and trust of foreign audiences and to promote understanding and respect for U.S. policies could be seriously undermined.

Placing USIA under the jurisdiction of the proposed Committee would also have the effect of involving the Committee in many activities totally unrelated to intelligence matters. Section 2, for example, by requiring continuing studies of

the activities of PSIA, would involve the Committee in the examination of: USIA publications and magazines, broadcasts by VOA, acquisition or production of films, maintenance of libraries and the conduct of English-teaching programs, organization of lectures and seminars for foreign audiences, and even the participation by Members of Congress in USIA programs.

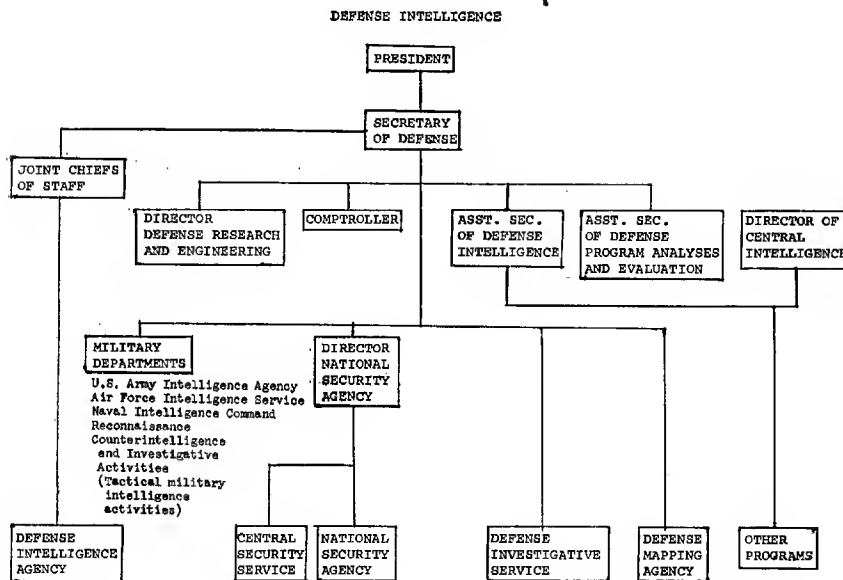
USIA always has and always will welcome the fullest Congressional oversight of our activities. We testify annually before four committees of the Congress on our authorization and appropriation requests, and we welcome the fullest Congressional interest in our activities. We are anxious to share our materials with Members of Congress, and we make every effort to involve the Congress in the programs by which we try to explain this country and its policies overseas. However, for the sake of the effectiveness and credibility of our programs, we urge the Committee not to include USIA or its information activities in the context of, or in conjunction with, its consideration of intelligence oversight legislation.

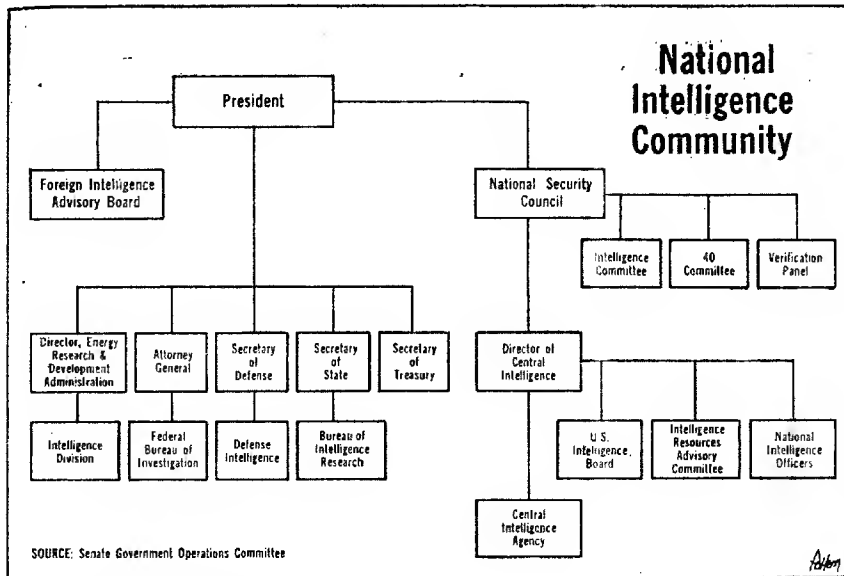
S. 317 and S. 189 do not appear to affect USIA, since this Agency does not engage in intelligence-gathering or surveillance activities. We therefore believe it would be inappropriate to comment on either of these bills.

We have been advised by the Office of Management and Budget that there is no objection to the submission of this report to the Committee from the standpoint of the Administration's program.

Sincerely,

JAMES KEOGH, *Director.*





U.S. SENATE,
SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS
WITH RESPECT TO INTELLIGENCE ACTIVITIES,
Washington, D.C., February 17, 1976.

HON. ABRAHAM A. RIBICOFF,
Chairman, Senate Government Operations Committee, Dirksen Senate Office
Building, Washington, D.C.

DEAR ABE: I want to congratulate you on the very fine hearings which you have conducted during these past few weeks on congressional oversight of the intelligence community. The necessity for immediate legislation in this area is reflected in the Senate's instructions to you to report a bill by March 1.

Your task is at once urgent and difficult. We struggled with the complex problems and issues raised by congressional oversight of the intelligence community for many months in the Select Committee, and I recognize that they are not easily resolved. However, I do firmly believe that the basic features of S. 2893, which was sponsored by the majority of the members of the Select Committee, are sound. A more effective accommodation of the competing values which must be reflected in such legislation may be impossible to achieve.

My major area of responsibility on the Select Committee, as chairman of its Subcommittee on Domestic Intelligence, has involved those intelligence activities of the Federal Government which have an impact upon the constitutional rights of American citizens. I have been particularly concerned with the activities of the Federal Bureau of Investigation. In that regard, and because of my general concern about the matter of effective congressional oversight, I would appreciate your including in your Committee record the observations set forth in the attached statement with respect to some of the concerns which have been expressed during your Committee's hearings.

Sincerely,

WALTER F. MONDALE.

Enclosure.

STATEMENT OF SENATOR WALTER F. MONDALE

The Attorney General, Secretary Kissinger, Directors Kelley and Colby, and other administration witnesses have raised concerns among the membership of your Committee about S. 2893. Before responding in detail to the arguments raised by these administration witnesses, I would like to remind the Committee of some of the abuses we have uncovered. These abuses demand more intensive oversight of the intelligence community by the Congress if our democracy is to survive.

As chairman of the Subcommittee on Domestic Intelligence of the Select Committee, I have spent the past few months immersed in the evidence of gross abuse of the rights of American citizens by the FBI and other domestic intelligence agencies. The Bureau's "neutralization" of Dr. Martin Luther King is a case in point. Between 1963 and his death in 1968, the FBI placed Dr. King under intensive physical and electronic surveillance, including in sixteen instances installing bugs in Dr. King's hotel rooms. The FBI decided to use the information it had obtained through this electronic surveillance to "dethrone" King, and to cultivate and promote a new leader of the civil rights movement. It used the information to attempt to block Dr. King's being awarded honorary college degrees. The Bureau attempted to block Dr. King's audience with the Pope and to discredit him with other churches and the clergy. It mailed a hotel "bug" tape to King with an enclosed blackmail letter.

Throughout this period the FBI obtained absolutely no evidence that Dr. King was involved in any criminal or violent activity. There was no evidence that Dr. King was connected with the Communist Party in any way.

Yet the FBI activities directed at Dr. King were not unique. Our public hearings in the fall documented similar activities against thousands of other domestic dissidents through the FBI COINTELPRO program. We heard evidence of surveillance of thousands of law abiding citizens by the FBI. The public record discloses the details of the Nixon administration's Huston plan to coordinate intelligence activities in a concerted attempt to deprive American citizens of their constitutional rights. We have also documented the CIA's Operation CHAOS; the NSA's electronic surveillance of millions of international telephone conversations of American citizens.

This is only a partial list but the point is obvious—Domestic intelligence programs of the federal government have presented and if not checked will continue to present a "clear and present danger" to the rights of speech, association, privacy, and the rule of law.

Therefore, I begin my discussion of the administration arguments against S. 2893 with the following premise: intensive Congressional oversight and the development of statutory restrictions on the domestic intelligence agencies, indeed the whole intelligence community, are essential to the preservation of our democracy. I assume there will be minimal risks to the effectiveness of the intelligence agencies through more intensive oversight, but I firmly believe that the risk to democratic principles in the absence of such oversight clearly outweighs any risk to the national security.

The administration witnesses have raised two basic concerns about S. 2893 to which I would like to address myself. As chairman of the Subcommittee on Domestic Intelligence of the Select Committee on Intelligence, I am particularly disturbed by the contention of some administration witnesses that the new committee should not have jurisdiction over the FBI's intelligence activities. According to these witnesses, it is impractical to segregate the FBI's intelligence functions for oversight purposes and this responsibility should therefore remain where it has always been in the Senate Judiciary Committee. Second, the administration apparently takes the position that S. 2893 should not be enacted because it does not resolve once and for all the many issues relating to the competing values of secrecy and disclosure.

I. DOMESTIC INTELLIGENCE CAN AND MUST BE WITHIN THE JURISDICTION OF THE NEW COMMITTEE

The prospect of excluding domestic intelligence from the jurisdiction of the new committee is intolerable. If the Senate takes that action in creating a new committee it will in essence be saying that when intelligence activities infringe upon the rights of our citizens, including the full litany of abuses mentioned above, then we should continue the same type of inadequate oversight we have had in the past. If, on the other hand, the activities involve the rights of foreign countries or the adequacy of our protection of the national security, then we must provide more intensive oversight in a special committee. This area of foreign intelligence requires special attention, but domestic intelligence requires even more intensive oversight because it is so intimately related to civil liberties.

The threat by intelligence agencies to our rights is at least as important as the CIA's maintenance of a proprietary in Southeast Asia or a Glomar Explorer in the South Pacific. Protection of the rights and liberties of citizens should be the paramount concern of this new committee, as it is with the Select Committee (see

paragraph 2 (12) of S. Res. 21), not excluded from its jurisdiction as the administration suggests.

At the outset I would like to make it clear that despite information which I have reviewed about abuses by the FBI, I still believe that the FBI is the finest law enforcement organization in the world. The basic cause of the gross abuse of civil liberties we have uncovered is the FBI's departure from its traditional law enforcement function. As Attorney General Levi reminded your committee, the most effective solution to the abuses of domestic intelligence is requiring the FBI to simply enforce criminal laws and not conduct political intelligence. Attorney General Harlan Fiske Stone imposed that restriction upon the FBI in 1924. Had it never been lifted I am confident we would not be concerned about FBI domestic intelligence.

Any oversight legislation which will frustrate a return to the Stone standard is inadequate. The administration's proposal to exclude domestic intelligence jurisdiction from the new committee will frustrate that purpose. Therefore, I submit that contrary to administration testimony it is not only possible to segregate out for oversight purposes the domestic intelligence activities of the FBI from its other functions but it would be more difficult and dangerous to attempt at this time to draw that line than not to do so.

S. 2893 defines domestic intelligence for the purpose of oversight in terms of the activities of the Intelligence Division of the FBI and any division which assumes those functions. Since Director Hoover established the domestic intelligence program in the 1930's, counterintelligence, counterespionage, and internal security intelligence functions have been carefully segregated within the Bureau in a separate division, the Intelligence Division, and that segregation continues today.

Basic supervision and policy formulation is centralized in headquarters in that division. Other types of intelligence, for example that related to organized crime or intelligence on crimes unrelated to terrorist violence or national security, are conducted by other divisions of the Bureau and would not be picked up by the new committee under S. 2893. There has been a mixture of functions in the investigative field offices of the FBI which might complicate oversight. This mixture of functions does not frustrate oversight of the FBI by the Department of Justice. Within the past year the budget officials within the Department of Justice have helped the Bureau to segregate out the functions of the Intelligence Division into separate budget line items, and to attach man years and funding figures to those items.

In executive session testimony before the Select Committee, the Assistant Attorney General for Administration who developed this new budget conceded that all of the functions of the Intelligence Division have been segregated out for budget purposes. If the Department of Justice can segregate out these figures for internal budget purposes, which is to say for their own internal oversight purposes, they can do so for external Congressional oversight. Indeed, if it were impossible for the Department of Justice to segregate out these figures it would mean that no one in either the executive branch or the legislative branch, including the FBI, could tell the American people how much money or manpower was being expended on intelligence activities directed at American citizens. This would seriously frustrate oversight of domestic intelligence by anyone, including the Department of Justice or the Judiciary Committee.

It would be more difficult and dangerous to separate out domestic intelligence from foreign intelligence for the purpose of oversight. It would be difficult because foreign intelligence and domestic intelligence are not as different as "apples and oranges", as the administration suggests. It would be dangerous because it would deprive the new committee of the jurisdiction necessary to develop a meaningful division between these concepts and develop other legislative remedies to protect civil liberties.

The activities of foreign and domestic intelligence have been inextricably linked. While foreign intelligence and counterintelligence activities performed abroad are the responsibility of agencies other than the FBI, the investigations frequently lead to counterintelligence activities in the United States, at which time the Bureau becomes the responsible agency. The investigation may be continued by the Bureau using the same techniques and sources as those employed by the agency with foreign intelligence responsibilities. Just as counterintelligence activities at home have been related to intelligence abroad, domestic security investigations are frequently linked through sources and methods to counterintelligence. The Huston plan is an excellent example of that phenomenon.

Under the guise of counterintelligence, the intelligence community conspired to violate fundamental rights of American citizens.

The FBI's investigation of Dr. King is another example of the fact that domestic and counterintelligence have been undistinguishable. It began as a counterintelligence investigation—an investigation supposedly undertaken to determine Dr. King's contacts with what the Bureau perceived as agents of a foreign power, the Communist Party of the United States. Indeed, we have substantial evidence that the mandate from President Roosevelt to J. Edgar Hoover which originated the FBI's whole domestic intelligence program was actually a counterintelligence mandate—Roosevelt wanted to know the impact of Soviet and Fascist agents on domestic groups.

We will never achieve what Attorney General Levi and I both agree is necessary—strictly confining the FBI to enforcing specific criminal statutes—if we exclude the Department of Justice from the bill. We must as he suggests conduct oversight of domestic intelligence as an adjunct of criminal prosecution. That is exactly why S. 2893 provides that the new committee have jurisdiction of domestic intelligence investigations and the criminal prosecutions, if any, which grow out of these investigations. The Select Committee recognizes that we can only achieve the goal which the Attorney General and I both seek, tying all domestic intelligence investigations to a criminal statute, by enacting a legislative charter which requires such a relationship. FBI witnesses requested such a charter when they testified before our Committee in the fall.

The new committee can only develop such a charter if it has the necessary jurisdiction. The committee that develops the domestic intelligence charter and conducts oversight over domestic intelligence should have the necessary jurisdiction over all elements of the intelligence community affected so that it can sort out these terms and develop comprehensive legislation.

II. S. 2893 PROVIDES ADEQUATE PROTECTION FOR CLASSIFIED INFORMATION

In light of the abuses we have uncovered I am suspicious of the arguments we are hearing about the irresponsibility of Congress in its handling of classified information. I have a hard time distinguishing between the fear of leaks which undermine the national security from the fear of intensive oversight and accountability.

The two legitimate concerns of the executive branch are that either information will be officially declassified by the Congress which undermines the national security or that some staffer or member will unofficially leak classified information. The basic concern of the Congress ought to be that the procedures we adopt accommodate those executive interests without unnecessarily frustrating oversight.

The most effective procedure for congressional declassification is established in S. 2893 whereby the executive branch can make its argument to the committee, secure the help of sympathetic members on the committee, and attempt to preclude release. In an extraordinary case the committee could refer the matter, with or without the information in question, to the full Senate for a decision. If the majority of the committee is so irresponsible as to abuse that power, the Senate can take action against the Committee by withdrawing from that committee the power to disclose the information and I am sure the voters would take their retribution on the members in the next election. Assuming that the Senate selects responsible Senators for that committee, the only way that procedure might fail is if the executive branch refuses or fails to make effective arguments against disclosure or if one assumes that there are not nine responsible Senators to fill those seats on the new committee.

I do not believe there is any more effective alternative. The administration, at least the Attorney General, concedes that one popular remedy, stiff criminal penalties, is not only unworkable but unconstitutional when applied to Senators and their aides. The Supreme Court held in 1972 that the separation of powers and the so-called "speech or debate" clause of the Constitution preclude the executive branch from using the judicial branch via grand juries or criminal prosecution to investigate the legislative activity of Congress, including its oversight of the executive branch. Stated another way, separation of powers and checks and balances would become a mockery if the FBI could investigate the Senate's investigation of the FBI. Therefore, the criminal approach is unworkable.

Senator Tower has introduced legislation which would require the Select Committee to turn to the full Senate on release of sensitive information. I am sure the intelligence community does not view resort by the new committee to the full Senate for a decision upon the question of release as a meaningful solution. Such a procedure will probably further jeopardize the secrecy of the information especially if the committee must disclose the information to the Senate. As the Attorney General stated, "Simply put, the danger of public disclosure depends, in part, on the number of persons who have access to information."

Two other alternatives have been suggested: the approach taken in the so-called Case amendment, section 112(b) of Title I of the U.S. Code, and the agreement reached between the House Intelligence Committee and the White House. Both procedures have in common the power of the President to unilaterally enjoin the Congress from releasing information. Obviously such a procedure would be a complete abdication on the part of the Congress to the executive branch.

Therefore S. 2893 is the only effective congressional declassification procedure because it is the only one that accommodates the legitimate interests of both branches. It is not a complete abdication of the prerogatives of the executive or legislative branches.

The question of unauthorized leaks by Senators or staff appears on the surface a dilemma. Criminal sanctions are unavailable because unconstitutional; therefore, the only solution is the removal from office. Of course, this is exactly how the executive branch deals with leaks. However, the ultimate solution is to name responsible Senators to the new committee who in turn will hire responsible staff. Then the Senate should make it clear that a leak which undermines the national security will cost them their jobs. We have followed that procedure in the Select Committee and have had no such leaks.

Furthermore, the likelihood of leaks, especially by Senators, is a direct function of the effectiveness of the formal congressional declassification procedures and the power of the oversight committee. By that I mean that frustrated Senators who have obtained classified information about some executive branch activity which they find abhorrent will be much less likely to resort to the calculated leak if there is a formal procedure to secure disclosure as provided in S. 2893. If they cannot secure declassification they can at least influence executive branch policy through the oversight committee.

Finally, I agree that these are not perfect solutions, but as a recent editorial in The Washington Post endorsing S. 2893 pointed out: "Any solution is sure to be a compromise open to challenge from both sides. In this sense the quest for a perfect solution is a recipe for stalemate."

If I have learned anything in my years in the Senate, it is that there are no "perfect solutions". My year on this Committee has convinced me that the equally important goals of protecting the national security and the constitutional rights of citizens mandate that we not tolerate a stalemate in this most critical area. Furthermore, in avoiding the stalemate we will not avoid risks to the national security for the only risks free oversight is no oversight at all. Then we will have taken the ultimate risk, our democracy.

PREPARED STATEMENT OF HON. JOHN V. TUNNEY, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

I strongly endorse the concept of creating a Committee on Intelligence Activities (COIA), an initiative which gives some promise of significantly improving Congressional oversight and control over our enormous intelligence apparatus.

However, I want to emphasize that my support presumes an immediate and public agreement on the precise meaning of "concurrent jurisdiction."

As I'm sure this Committee agrees, jurisdictional exclusiveness should not be used in the future to thwart and diminish overall Congressional effectiveness in certifying that intelligence activities are congruent with established Constitutional principles.

The Subcommittee on Constitutional Rights, which I chair, has an unusual jurisdiction, one that I have called a "conceptual jurisdiction" and one that contrasts with the "institutional jurisdiction" that many other Congressional panels develop over time with particular agencies, constituencies and issues.

My Subcommittee's "conceptual jurisdiction" is, simply stated, the protection of the rights guaranteed by the Bill of Rights. The Subcommittee is charged with investigating any infringements of the Bill of Rights from any quarter. The basis of this jurisdiction is found in Rule 25.1(1).12 of the Senate Rules, which gives the Judiciary Committee jurisdiction over all matters relating to civil liberties.

Beginning in 1955 with the chairmanship of Senator Hennings and continuing under the long tenure of Senator Ervin, the Subcommittee on Constitutional Rights has employed this jurisdictional basis in countless innovative ways and has consistently led the battle to protect the Bill of Rights against totalitarian forces. Indeed, I believe that disinterested observers would say that the Subcommittee's emphasis on protecting individual privacy over the past seven years laid the theoretical and factual bases for the current investigations of the abuses of the intelligence community.

During my short time as Chairman of the Subcommittee, I have already witnessed several episodes in which the intelligence community has invoked the presumed jurisdictional exclusiveness of the Select Committee on Intelligence to delay or deflect the Subcommittee's activities on behalf of the Bill of Rights. Thus, I think it is imperative that the intelligence community understands that the COIA is not being created for its own convenience or for the purpose of limiting the reach of the Bill of Rights. To facilitate this understanding, "concurrent jurisdiction" must not in any way imply a "secondary" role for this Subcommittee and its investigations and not in any way place this Subcommittee's investigations, including those that necessarily carry the Subcommittee into the intelligence community, under the supervision of the new COIA.

The Subcommittee on Constitutional Rights should not be placed in the position of an "appellant" in justifying its defense of the Bill of Rights. The intelligence community should never be able to exploit the jurisdictional fences created by the Congress to evade Constitutional responsibilities. I believe we should agree quickly on the proper means of conveying an understanding of this important principle.

MCLEAN, VA., December 18, 1975.

Senator ABRAHAM RIBICOFF,
Chairman,
Senator CHARLES H. PERCY,
Ranking Minority Member,
Committee on Government Operations, U.S. Senate, Washington, D.C.

DEAR SENATORS RIBICOFF AND PERCY: I appreciate very much your letter of November 24 inviting me to comment on the subject of Congressional oversight of the Government's foreign or domestic intelligence and investigatory activities. Disclosures of the last few years have graphically demonstrated the need for major improvements in these areas, and I am glad to help in any small way that I can.

First, let me say that there is no question in my mind of the need for a major refurbishing of the present Congressional oversight procedures. In the past this function has been carried on by too small a group of individuals who even with the best of intentions were unable to spend the necessary time on this very critical function. The base of the Congressional oversight organization must be broadened to insure wider representation of views and backgrounds and to provide opportunities for the continuous infusion of new ideas. Actions which might have been suitable and necessary in the 1950s can very easily be counterproductive in the 60s and 70s, but there is an inevitable tendency to continue operations even though they have outlived their usefulness. Some procedures must be created for inserting into the oversight mechanism from time to time new whistle-blowers and new innovations.

The critical need for fresh approaches must, however, be balanced by experience since the entire intelligence process is very complicated and difficult to unravel even under optimum circumstances. Therefore, Congressional oversight must rely on expertise built up from continued association with the subject. A key element here, of course, is the Congressional representation itself, which I believe can best be obtained by having a single Joint Committee with membership from both the Senate and the House. Two separate Committees would only tend to compound the difficulties in getting the members properly informed. A second key element in an Oversight Committee is the permanent staff, and it

would be folly, if not impossible, to try to duplicate qualifications of the people needed to perform this important function. Finally, there is the obvious need for the Committee to deal with highly sensitive materials, and this can be much more effectively handled in a single Committee than with two separate groups.

The Joint Committee on Atomic Energy (JCAE) was established after the war to oversee the nation's atomic energy programs because of the critical importance these had to our nation's security. In the early days, the JCAE had to deal with highly sensitive materials and to the best of my knowledge had an unimpeachable record in avoiding undesirable disclosures. Atomic energy secrets are no longer as sensitive, but the example of the JCAE would be a very good one for a joint committee on intelligence to emulate. In many ways the problems would be quite similar. The JCAE has usually been favored over the years with a well qualified staff capable of handling highly technical matters, and any intelligence committee must be similarly supported if it is not to become mired in the intelligence bureaucracy. The oversight committee will have to sift through a wide variety of confusing and conflicting materials, and this can only be done by a full-time staff.

Since it is important that the Committee does not develop over the years a vested interest in the intelligence community and thereby become a lobby for, rather than an overseer of, intelligence organizations, procedures for regular rotation of committee and staff members should be created. Perhaps Senate committee members should be restricted to two six-year terms and House members to four two-year terms: thus establishing a regular basis for rotating in and out new members. Although perhaps more difficult to legislate, the committee should likewise develop procedures so that the staff also has an infusion of new blood at frequent intervals.

It has been suggested that the Committee should have jurisdiction of not only intelligence activities but also domestic investigative activities. Although the recent disclosures have shown abuses and the need for tightening up of controls in both areas, it is my view that the proposed joint committee should restrict its activities to those agencies or parts thereof which are involved in foreign intelligence. While I believe that all foreign covert action by the U.S. Government should be halted, if a decision is not made to do this, then such operations should also come under the jurisdiction of the committee.

Similarly, within foreign intelligence should be the counter-intelligence activities of such agencies as the FBI or CIA and the Defense Department as they relate to activities of foreign, not domestic, groups. Specifically, the committee should oversee the foreign intelligence functions of the CIA, NSA, DIA, Army, Navy and Air Force military intelligence agencies, the FBI, and ERDA. However, to add the responsibility for monitoring the strictly domestic investigations of such agencies as the IRS, Drug Enforcement Administration, Secret Service, and even the FBI would greatly complicate the work of the committee and dilute its ability to handle properly subjects related to foreign intelligence. Foreign intelligence by itself is a sufficiently complex and varied area as to tax the oversight capabilities of even the best organization. To load on all the domestic investigative agencies would probably be the straw that broke the camel's back and result in the committee being ineffective in any area. Although I cannot speak with any expertise in the investigative area, I would believe that the current Congressional organizational structure which oversees these domestic agencies could monitor such activities if they made a real effort. Perhaps their performance could be improved by some coordination between the staffs and the Committees involved to make sure that all know what the others are doing.

I believe that a Joint Committee on Foreign Intelligence (JCFI) should not only be overseeing the activities of all agencies involved in foreign intelligence but should also be responsible for authorizing the funds for all these agencies' intelligence operations. The intelligence community should have a consolidated budget, and the Congress should have a single mechanism for reviewing that budget. Furthermore, the JCFI might rapidly lose any oversight influence if it did not have control of the purse strings, which is the most effective mechanism that Congress has for controlling executive branch activities. While this admittedly presents some problems where only part of an agency budget involves intelligence, I believe procedures could be worked out between the various Congressional Committees so that the relevant parts were authorized by the two separate groups.

Certainly, the Committee should have jurisdiction over confirmation of the senior officers in the Central Intelligence Agency and perhaps for the heads of the intelligence components of other agencies which might require such confirmation. Specifically, this might include the Director of NSA and Assistant Secretary of Defense for Intelligence, the head of DIA, and that individual in the FBI in charge of its foreign intelligence responsibilities.

One function of the Joint Committee which has not been widely discussed would be to insure that the Congress is provided with the substantive intelligence it needs to carry out its functions. The intelligence community must serve the Congress as well as the Executive branch, and what the Congress learns on foreign military and political matters should not be left to the whims of the individual agencies. The CIA should be charged with supplying intelligence information to the Congress on a timely basis as well as to the President. It would appear that the JCFI could well be a center for bringing together the intelligence needs of the various Congressional Committees, passing these on to the intelligence community and receiving material back and disseminating it to the appropriate groups. If this function was performed on a routine basis, the Congress would be in a much better position to make decisions than at present when all too often they are limited to subjective intelligence analyses from agencies which wish to use the intelligence for their own purposes. The JCFI could establish security procedures for handling this material but must not be allowed to become a bottle-neck cutting off the individual Committees and Members of Congress from information they need in their work. For an amplification of my views on this subject, I should like to refer you to my testimony on March 28, 1972, before the Senate Committee on Foreign Relations on National Security Act Amendment S. 2224.

I hope these brief thoughts will be of some use to you in your very important task. I should be glad to elaborate on some of these points at any time you might wish.

Sincerely,

HERBERT SCOVILLE, JR.

NARRAGANSETT, R.I., January 8, 1976.

HON. ABE RIBICOFF and CHARLES H. PERCY,
Committee on Government Operations, U.S. Senate,
Washington, D.C.

GENTLEMEN: This is in response to your letter of November 24, 1975, requesting my views on proposals for Congressional oversight of the U.S. intelligence community.

Enclosed are my comments which are keyed to the staff outline of the issues raised by the proposed legislation. I am willing to answer questions or add further explanation to my statement if you so desire.

Sincerely,

LYMAN B. KIRKPATRICK, JR.

Enclosure.

STATEMENT BY LYMAN B. KIRKPATRICK, JR., PROFESSOR OF POLITICAL SCIENCE AND
UNIVERSITY PROFESSOR, BROWN UNIVERSITY, PROVIDENCE, R.I.

A. DESIRABILITY OF LEGISLATION

For more than two decades the Congress has had before it the question of whether to establish a permanent intelligence oversight committee. For many reasons no such committee has been established. The impetus provided by the extensive investigations and hearings of the Senate Select Committee on Intelligence Operations should be used to resolve this issue.

It seems appropriate to note that recent revelations have resulted in a considerable loss of confidence on the part of the American public not only in the integrity of the intelligence agencies but also in the degree and quality of the controls and oversights over the U.S. intelligence community. The Congress has a major responsibility to insure that effective controls and oversights are established. Establishment of controls and oversight in turn should result in the eventual restoration of public confidence in the intelligence agencies. Therefore it is my conclusion that there is need for a new Congressional committee.

This committee should perform the function of providing a permanent and continuous oversight of the intelligence community. Oversight is defined as a

review of all "foreign intelligence activities", both overseas and domestic, of the intelligence agencies, and of any activities by other departments or agencies of the government performed for or in conjunction with the foreign intelligence agencies.

The phrase "foreign intelligence agencies" is used to identify those organizations whose primary responsibilities, either for information or for operations, are outside of the United States. This would leave responsibility for oversight of the Federal Bureau of Investigation with the Judiciary Committee.

The effectiveness of such a committee will depend upon the willingness of its members to perform a thorough oversight of foreign intelligence activities while maintaining the classified nature of such matters.

The possible alternatives to such a committee is the continuation of the present committees with increased emphasis on oversight.

B. JURISDICTIONAL QUESTION

1. The committee should have jurisdiction for oversight of all foreign intelligence agencies or components thereof which are represented on the United States Intelligence Board or its subcommittees.

The committee should *not* have jurisdiction over other agencies with domestic or foreign investigative responsibilities or "all investigative activities, whether civil or criminal." The nature of foreign intelligence activities is such that it is in the national interest to have a Congressional oversight committee concerned solely with this vital activity. However, it is recommended that the respective standing committees be encouraged to exercise oversight responsibilities over the other investigative agencies.

2. The appropriate jurisdictional phase is "foreign intelligence" inasmuch as it will cover "national intelligence", "counterintelligence" and even those areas of so-called "domestic intelligence" in which the activities of foreign agents or foreign nations are concerned.

3. The committee, in my opinion, should have oversight responsibilities only. This in itself is a major responsibility which will be sufficiently time-consuming. The general legislative authority should remain with the present standing committees and the jurisdiction should be concurrent. Jurisdiction over confirmations should remain with the standing committees, although—as would be customary in any case—the views of the oversight committee should be considered.

C. RELATED QUESTIONS CONCERNING POWERS AND RESPONSIBILITIES

1. The legislative description of the permanent oversight committee's duties and responsibilities should insure that it has both the authority and responsibility to examine each and every foreign intelligence activity endorsed, sponsored or supported by the United States government. Only with such an all-encompassing mandate will there be assurance that no operation or activity escapes attention (see 4 below).

The committee should report to the Senate (and/or the Congress) not less often than once each session—more frequently if there are urgent matters requiring the attention of the body of the whole—and each report should be in two parts: one public and one classified. The public portion of the report should give a general assessment of the quality of the intelligence activity of the United States; the efficiency and economy of the intelligence effort; and any committee recommendations which can be made public. The classified version of the report should contain those items which would benefit the enemies of the United States if made public.

2. There should be continued access by other committees to the analysis of the intelligence agencies.

3. It would be my strong recommendation that the authority to review covert actions pursuant to the Hughes-Ryan Amendment of the Foreign Assistance Act of 1974 (22 USC 2422) be vested in the oversight committee with at least the Chairman and Ranking Minority Members of the Foreign Relations, Armed Services and Appropriations Committees asked to participate. This would provide a broad base for the review of covert operations; would provide a forum for discussion with the Director of Central Intelligence; and yet would assure the security without which covert operations are not only unsuccessful but counterproductive.

4. There should be no qualification whatsoever to the duty of the agencies to keep the committee "fully and currently informed" of all foreign intelligence activities. It is knowledge of the nature of the foreign intelligence activity which is vital to the effectiveness of the committee's work. The committee must know what is being done, although there may be occasions when such details as where and who may be omitted. To insure that there is no possibility of a failure of disclosure the Chairman and the Ranking Minority Members should have the right to be fully advised of all details and should jointly decide as to how the committee should be informed.

5 & 6. It is my view that the committee should have subpoena power and an effective procedure for insuring compliance.

7. There should be enacted a statute making it a criminal offense for any employee, present or former, of any branch of the United States government to divulge classified information without appropriate authority.

8. The committee should have the authority to give and review on its own security clearances for its staff after name checks and full field investigations have been made by the Federal Bureau of Investigation.

D. STRUCTURAL QUESTIONS

1. There should be only one permanent oversight committee. The requirements on the intelligence community for reporting to Congressional committees are already heavy and will be made more so by an oversight committee. Therefore it would seem that a joint congressional committee is necessary.

2. My suggestion is that ten is an optimum number for the size of the committee.

3. More than one member has suggested that an oversight committee has no political appeal because members will not be able to tell their constituents about their work. The benefit of rotation is therefore suggested. On the other hand, "foreign intelligence activities" are complex and the value of background knowledge and experience is great. I would therefore urge that if rotation be adopted it be on a basis of every six years.

4. Members should be elected by the Senate. While this is a departure from Senate procedure, I must strongly urge its consideration. The American public is skeptical about our government. The most democratic procedures are necessary to restore the confidence.

5. There is considerable merit to designating places on the committee for representatives of Armed Services, Appropriations and Foreign Relations. However, places should be available for members who express a desire to be on the committee. If selection is made by election by the Senate this could be a consideration of the members.

6. The Chairman should be elected by the committee.

7. It would appear that members could also sit on Foreign Relations, Armed Services or Appropriations.

8. If the committee has ten members I would urge that a permanent division of six and four be adopted. "Foreign intelligence activities" transcend partisan politics.

9. The staff should be of sufficient size to be able to keep thoroughly informed of all foreign intelligence activities. Staff personnel should be selected for their open-mindedness, objectivity and desire to serve the national interest while maintaining full security and possessing a passion for anonymity. Intelligence activities attract the interest of many but the dedication of few and therefore the careful selection of the staff is of prime importance. The pay scale of the staff should be the equivalent of that of the staff of the standing committees. The committee should make extensive use of qualified consultants with the proper clearances.

BIOGRAPHICAL INFORMATION OF LYMAN B. KIRKPATRICK, JR., PROFESSOR OF POLITICAL SCIENCE AND UNIVERSITY PROFESSOR, BROWN UNIVERSITY, PROVIDENCE, R.I.

Born: Rochester, New York, July 15, 1916.

Education: Princeton University, Woodrow Wilson School of Public and International Affairs, B.A. 1938.

Employment: 1938-42—Editorial Staff, United States News. 1942-46—U.S. Army, discharged as Major (Legion of Merit, Bronze Star, French and Belgian Croix de Guerre, 5 battle stars). 1946-47—Editorial Staff, World Report. 1947-65—Central Intelligence Agency: 1947-1948, Staff Officer; 1948-1950, Division Chief; 1950-1951, Executive Assistant to Director; 1951-1953, Assistant Director;

1953-1962, Inspector General; 1962-1965, Executive Director—Comptroller: (1960—National Civil Service League Award as one of ten outstanding career officers. 1964—President's Award for Distinguished Federal Civilian Service. 1965—Distinguished Intelligence Medal). 1965-present—Brown University. 1971-72—Naval War College, Chester A. Nimitz Professor of National Security and Foreign Affairs.

Books: "The Real CIA." MacMillan, 1968. "American Security Policy," Department of Navy, 1968. "Captains Without Eyes: Major Intelligence Failures in WW II," Macmillan, 1969. "The Intelligence Community: Foreign Policy and Domestic Activities," Hill and Wang, 1973.

Articles: Military Review, May, 1961, "United States Intelligence." Vital Speeches, January 15, 1961, "Is United States Intelligence Answering the Red Challenge." Naval War College Review, Newport, R.I. Twelve part series on: "Cold War Operations: The Politics of Communist Confrontation." Vol. XX, No. 4, Nov., 1967, "Marx and his Followers"; Vol. XX, No. 5, Dec., 1967, "A Brief History of the Cold War"; Vol. XX, No. 6, Jan., 1968, "The Sino-Soviet Spirit"; Vol. XX, No. 7, Feb., 1968, "The Communist Control System"; Vol. XX, No. 8, Mar., 1968, "The Cuban Case History"; Vol. XX, No. 9, Apr., 1968, "Vietnam"; Vol. XX, No. 10, May, 1968, "The Intelligence Organization"; Vol. XX, No. 11, June, 1968, "Communism in Latin America"; Vol. XXI, No. 1, Sept., 1968, "Communism in Africa"; Vol. XXI, No. 2, Oct., 1968, "Communism in the Near East"; Vol. XXI, No. 3, Nov., 1968, "Communism in Asia and South Asia"; and Vol. XXI, No. 4, Dec., 1968, "Communism in World Affairs". Brown Alumni Monthly April, 1960, "The President's Problems." Encyclopedia Britannica Book of the Year. "Armies of the World," Annually 1948-1960 inclusive. Res Republica, October, 1968, "Have Our Institutions Failed Us." Naval War College Review, May, 1971, "Insurgency: Origins and Nature of the Beast."

Boards: Board of Visitors, Defense Intelligence Agency, Washington, D.C.

Courses Taught at Brown: Political Science 144: Cold War Operations. Political Science 145: American Security Policy. Political Science 182h: American Military Affairs. Political Science 245: Problems of National Strategy.

WASHINGTON, D.C., January 13, 1976.

Hon. ABE RIBICOFF and Hon. CHARLES H. PERCY,
U.S. Senate,
Washington, D.C.

DEAR SENATORS: This letter and enclosed memorandum are in response to your letter of November 24th asking for my comments on the governmental structure for the oversight of United States intelligence organizations and operations.

The suggestions contained therein are based on my ten years' service as Deputy Director (Intelligence) of CIA (1952-1962), plus service as the intelligence community representative during the Eisenhower terms on the National Security Council's Planning Board and the Foreign Economic Policy Council headed by Clarence Randall. From 1962 to 1965, I was Chief of the International Division of the Bureau of the Budget responsible inter alia for the budgets of all components of the intelligence community. It should be stressed that for the past decade I have had no involvement, formal or informal, in intelligence activities and that my knowledge of recent pertinent developments is entirely based on press reports.

The memorandum, while specific, is confined to the essential elements of the problem and omits answers to many subordinate questions. I feel very strongly about points 1-6 on which my experience is adequate to permit me to speak with some confidence. Items 7-9 are, because of my lack of direct experience on those subfields, considerably more tentative.

I am taking the liberty of copying this material to my good friends Senators Symington, Church and Mathias, with whom I have during the past year discussed matters before the Select Committee.

If you or your staff wish to pursue any of these questions with me, I am prepared to respond.

Respectfully,

ROBERT AMORY, Jr.

Enclosure.

MEMORANDUM ON RESTRUCTURING UNITED STATES INTELLIGENCE COMMUNITY

1. *Congressional Oversight.*—There should be a Joint Committee on Intelligence with responsibility for all agencies or components of departments or agencies primarily engaged in intelligence affecting the national security. It should be modeled on the Joint Committee on Atomic Energy and provided with adequate, secure premises and a competent, but not overlarge, staff. In addition to normal investigative and oversight functions, it should also formally advise the Senate respecting its advice and consent to appointments within the intelligence community. It should also advise the appropriations committees of both bodies as to budget matters of particular concern to intelligence operations. Membership on it should include Senators and Congressmen of proven competence in national security matters, and membership on Armed Services, Foreign Relations/Affairs, etc., Committees should not preclude membership on the Intelligence Committee.

2. The President's Foreign Intelligence Advisory Board should be abolished and replaced by an *Intelligence Advisory Commission* (hereinafter the Commission) established by law which should have the following composition and functions:

Ten members appointed by the President with advice and consent of the Senate;

Terms 5 years, staggered so that 2 are appointed each year; maximum tenure 2 terms;

Part-time service with salary sufficient to attract ablest people, e.g., \$10,000 per annum for 10 two-day meetings a year;

Small but competent staff (See DCI and IG infra);

Offices close to, but separated from, DCI and IG;

Initial screening and recommendation of candidates for DCI;

Absolute need-to-know clearance for all intelligence matters, foreign and domestic;

Close working relations with Joint Congressional Committee;

Report to President regularly on ad hoc basis and submit annual report to President and Joint Committee;

Review budgets of all intelligence components and make recommendations to D/OMB, prior to latter's review;

3. *Director of Central Intelligence.*—He should be the principal United States officer, reporting readily and directly to the President, with general oversight over all intelligence activities, foreign and domestic. He should *not* exercise executive direction of the CIA or any other intelligence agency.

He should be selected for nomination by the President from a slate of 5-10 candidates approved by the Commission. Such a slate would have to include one or more career intelligence officers, one or more government officials and one or more persons from the private sector, including the scholarly community. The nominee would, of course, require confirmation by the Senate.

The tenure of the DCI should be 7 years, with extension permissible only in times of national emergency.

He should not be removable from office by the President, except with the advice and consent of the Commission and the Joint Committee¹, though in the case of grave illness or dereliction, the President should be empowered to suspend him or her for 30 days.

He should have a deputy similarly selected, appointed and confirmed, initially for 3 years, thereafter for 7.

He should be Chairman of the United States Intelligence Board (hereinafter USIB) and a non-voting member of the National Security Council.

He should have a small administrative staff, including sufficient competence to review and present recommendations on all intelligence budgets to the Commission.

The staff should also include a reconstituted Board of National Estimates with supporting staff and the secretariat of USIB.

His situs should be neither in the CIA headquarters building, nor in the White House-Executive Office Building complex. A location in one of the many buildings now occupied by CIA in Rosslyn would be ideal as convenient to, and

¹Had Richard Helms been able to say flatly to Presidents Johnson and Nixon when directed to exceed his legal authority "No way, Mr. President," much of the present travail would have been avoided.

almost equidistant from, CIA-Langley, the Pentagon, State Department and the White House.

4. *United States Intelligence Board (USIB).*—This Board should comprise: DCI (Chairman), the heads of CIA, Assistant Secretary of State for Intelligence and Research, the head of DIA, the Internal Security Service (see *infra*), the intelligence head of the JCS Joint Staff, and for matters involving their direct responsibilities and expertise the heads of the National Photographic Interpretation Center and National Security Agency. It should not include intelligence chiefs of the individual armed services.

Its major functions should be: Formulation of priorities for intelligence collection and analysis; Preparing agreed or divided National Intelligence Estimates (see Board of National Estimates); Supervising a watch committee which would operate a round-the-clock National Indications Center; and Supporting USIB should be an appropriate structure of technical and specialized subcommittees with membership representing all participating agencies.

5. There should be reestablished a *Board of National Estimates* appointed by the DCI in consultation with the members of USIB. Such a Board worked extremely well for two decades until dismantled by the present administration. Approximately 10 in number, this full-time "judgment review" group of men chosen from senior or recently retired diplomats, military men or the academic world is essential to query, balance and compensate for departmental and individual biases that invariably show up in contributions to estimates. Totally devoid of policy-making or operating responsibilities, the members of the Board, individually and collectively, are the best and indispensable guarantors of the *sine qua non objectivity* in intelligence assessments. Working with the Joint Staff of the JCS the Board can, as in the 1950's, from time to time provide "net" estimates of the likely interplay of friendly and hostile forces in particular situations.

The Board and its staff (no more than 50 people all-told) should be co-located with the DCI.

6. *Inspector General.*—An inspector general with overall responsibility over the intelligence community should be appointed by the President with the advice and consent of the Senate. His place in the executive pay structure should be equal to that of the Deputy Director of Central Intelligence.

He and his central staff should be co-located with the DCI.

He should basically report to the DCI but be authorized by statute to report at his discretion to the Commission and the President and should be required to testify independently of any executive privilege when called before the Joint Congressional Committee.

His central staff should be composed of officers not on detail from any intelligence agency, but his staff should be kept small and utilize agency staff personnel for routine examinations and investigations.

The portion of the legislation creating the IG office should save harmless from retribution any intelligence agency personnel who in good faith call attention of the IG or his staff to what appears to be illegal or seriously incompetent action by others in the intelligence community. (This section will require most careful drafting.)

The IG should serve for a 7 year term not coeval with the DCI and DDCI, and his removal should be covered by the procedures suggested for the DCI.

7. *Covert Operations.*—Essentially, these should be abolished by law, except in a declared state of national emergency and even then should not be part of the CIA's chartered responsibility.

I would, however, suggest that the Congress appropriate a no-year revolving fund of say \$50,000,000 for the covert support of friendly political parties and personages. This fund would be used only on personal authorization of the President and would be transmitted through non-official commercial and private banking channels by the Department of State. No prior or current briefing of the Congressional Committee would be required; but, when requests for replenishment of the fund is made, a "post-audit" hearing on the expenditures would be held by the Joint Congressional Committee. A certificate by that committee that a replenishing appropriation was justified should be legally binding in the Appropriations Committees.

8. *Internal Security.*—Clearly, the CIA should have no permissible role in internal security no matter how elegant a cloak of "national security" could be woven around a given perceived threat or counter-measure.

Nor should the FBI. An organization, the primary purpose of which is combatting crime, does not have the basic sophistication to assess genuine threats

to the internal security of the United States and its major institutions. Persons recruited for and spending most of their working lives dealing with felonies, kidnapping, bank robbery, interstate car thefts, etc., cannot be expected to draw the fine line between dissidence or disaffection and conspiratorial efforts to pervert the basic institutional structure of our free society. Never forget that Kim Philby in England posed as a Franco worshipper while working for the USSR and Sorge in Japan as a faithful Nazi.

We need a new *Internal Security Service* modeled on Britain's MI-5. Like the latter, it should be quite small and manned by persons of the highest intellectual and professional competence and sophistication.

Its head, as indicated above, should be a Presidential appointee, screened by the Commission and confirmed by the Senate, with similar provisions for tenure and removal.

In addition to its headquarters staff, no more than 3 or 4 field officers should be required.

To counter the argument that today's internal security threats involve compounds of international and domestic outlaws capable of the most horrendous violent crimes against innocents, it can be pointed out that in the Ulster turmoil the UK's organizations, Scotland Yard (Home Office) with primary law enforcement responsibility, MI-5 (domestic security), MI-6 (foreign intelligence) and military intelligence all work effectively together.

Certainly, the removal from the FBI of the internal security responsibility should not be carried out without the most careful study. The experience of Great Britain, Australia, Canada, France and the German Federal Republic should be examined thoroughly as part of such study.

9. *Nomenclature*.—I have deferred to the end of the question of retitling CIA and other organizations and jobs. Regrettably, I now conclude that the CIA's once proud name should pass into limbo and the foreign intelligence gathering and evaluating arm should be renamed. Its staff officers assigned abroad should be fully and securely integrated into the foreign or military services or should operate under effective private sector cover.

The overall Director of Central Intelligence should bear that title, possibly dropping the "Central," but the heads of all operating agencies should be designated "Administrators," whether military or civilian, to underscore their subordination to the DCI and the limitations on their agencies' autonomy.

CORNING INTERNATIONAL CORP.,
New York, N.Y., January 2, 1976.

Hon. ABE RIBICOFF and
Hon. CHARLES S. PERCY,
Committee on Government Operations,
Washington, D.C.

GENTLEMEN: I take pleasure in referring to your letter of November 24, 1975, relating to the proposal to create a permanent committee to oversee government activity concerning foreign and domestic intelligence.

I have read carefully the copies of three bills which you enclosed, together with the paper prepared by your staff relating to some of the issues your Committee will consider.

Among the three bills I was impressed by S. 189 introduced in the Senate on January 16, 1975, as a start in the right direction. No doubt this has been the subject of considerable study since its introduction.

It seems to me apparent that congressional action obviously is called for, and that the best form it could take would be the organization of a competent joint committee to oversee United States operations in the field of intelligence, including covert operations. I assume, of course, the continuing and urgent need of an effective collection of foreign and domestic intelligence, and unavoidable operations of a covert nature.

In the support of such a Committee's activity, it should be able to profit from the operations of the President's Foreign Intelligence Advisory Board. While that Board is set up to report only to the President there is no good reason as I see it, why the benefit of the Board's findings and recommendations on most questions could not be available to the Committee for its information. The P.F.I.A.B. as you know has played an important role in the development of technical collection systems, in useful analyses of apparent intelligence failures, and in directing attention to new issues of intelligence concern. It has been

recommended that the Board should play a larger role in the oversight of the performance of the foreign intelligence community as a whole. It seems to me that the Board's activity would tie in neatly with the proposed Committee's objectives.

Oversight by the proposed Committee of classical intelligence collection, overt and confidential, and its dissemination, obviously would be pertinent and of interest to such a Committee. I see no especial difficulty in organizing such oversight.

Covert action, of course, is a special problem. Covert action, activity abroad is intended not only to gather information, but to influence events. That has been described as an activity midway between diplomacy and war, going the way from financial support of friendly publications to the organization of paramilitary efforts. While it has been urged by a few that covert action by our Government should no longer be authorized at all, I join the view that covert action in the present world situation cannot be abandoned. It should be employed, of course, only where clearly essential to vital United States purposes, and then only after a careful process of high level review.

Now the access of the proposed Committee to information relating to covert activity presents a delicate question but I should think with the approval of the President an appropriate liaison between the proposed committee and either P.F.I.A.B. or the 40 Committee could be established on a confidential basis. Perhaps this should be limited to a special small subcommittee. Contact with the proposed Joint Committee of the Congress on National Security would no doubt also be involved.

In establishing the proposed committee and in the selection of its members from both the Senate and House an important problem is to make a selection if possible of members who have some background and interest in the intelligence field, and especially who can give the necessary time and energy to this activity. I know this is not easy, but the nature of the activity requires a positive and qualified approach.

With warm regards,
Yours sincerely,

ROBERT MURPHY.

SUGAR HILL, N.H.. *February 14, 1976.*

Senator ABRAHAM RIBICOFF,
Chairman,
Senator CHARLES H. PERCY,
Ranking Minority Member,
U.S. Senate, Committee on Government Operations,
Washington, D.C.

DEAR SENATORS RIBICOFF AND PERCY: Please refer to your letter to me of November 24, 1975, and my reply of December 15, 1975, advising you I would be privileged to comply with your request relative to which you set a deadline of March 1, 1976.

Enclosed you will find the paper I have prepared for your consideration. Not being a lawyer, I have avoided the legal aspects of the legislation you have in mind. Hence, what I prepared may or may not have any value for you.

I know you will realize I am not a typist, therefore I assume you will be charitable to my imperfections and labored efforts.

If there is any additional assistance I can render you please do not hesitate to so inform me.

With highest esteem and much appreciation for the important work you are doing.

Sincerely yours,

WILLIAM C. SULLIVAN.

PART I.¹—REFLECTIONS ON THE REORGANIZATION OF THE FEDERAL BUREAU OF INVESTIGATION

I. LENGTH OF DIRECTOR'S TERM

The term of the Director of the FBI (or any other Federal investigative or intelligence agency) should be limited preferably to five years or seven years at the very most. Reappointment to another term should be strictly prohibited for it would lead to nothing but abuses.

¹ Part II not printed here.

First: The Director's first term would be greatly taken up with developing support and power (on a quid pro quo basis) with the key men in the White House, Congress and the Department of Justice rendering services to each other to make certain he would get reappointed. To use the vernacular, his first term would be largely spent in "politicking" and ingratiating himself to assure reappointment.

Second: This in turn would set into operation a whole series of related abuses similar to those present in the J. Edgar Hoover dynasty with new ones added.

Third: The longer such a Director stays in office the more he knows about the personal and official lives of powerful men in and out of government. We men are not good enough to possess this kind of unique knowledge for more than five years, when such a potent nationwide organization as the FBI, with the country saturated with its informants, is at the disposal of its Director and any aspiring unprincipled men he may have around him.

J. Edgar Hoover reigned unchallenged from 1924 to 1972 and the countless abuses of his tremendous power which grew steadily with the length of time he was Director are now well-documented. The skill with which he wielded this power mesmerized many in public office and elsewhere to the point where they could not stop from uttering absurdly endless and excessive praise. Others, not mesmerized, coldly gained through the calculated rendering of mutual services to each other. These were both political and non-political. Lastly, there were still others equally informed as in the second category mentioned above but who were too fearful of J. Edgar Hoover to take any action to expose the truth to the American people and cause Mr. Hoover to be removed. (A dissenting voice was occasionally raised but was rapidly ridiculed, suppressed or ignored). Lord Acton was right, here, as he has been on numerous other occasions:

"Power corrupts and absolute power corrupts absolutely."

I believe it was Elbridge Gerry of Massachusetts, who at one major convention on constitutional matters, opposed relentlessly the provision making it possible for Senators to seek reelection. He said one term is enough. He emphasized that reelection would create a professional class of politicians detrimental in the long run to the welfare of our nation. He lost. But, who can argue convincingly that he was wholly wrong or at least wrong in every instance.

So, too, with the heads of investigative agencies. We do not want them to become a professional investigative leadership class, "scratching each others backs," strengthening each others powers, concealing each others failures, classifying each others mistakes as they create year by year a deeper and deeper comfortable rut for themselves which makes fresh insights, continual reform and administrative vision, so necessary to a democracy, impossible, while around them multiply their favorite "apple polishers," sycophants, and toadies constituting the palace guard who are essentially shut off from the vast majority of investigators in the organization. In the FBI we had a colorful phrase for this coined by Guy Bannister, one of our able Special Agents in charge of different Field Offices during his long career. On one occasion he wrote J. Edgar Hoover in a blunt, critical vein to complain that: "Twenty years ago the FBI leadership had divorced the field investigators and the two have been living in adultery ever since." Needless to say he never recovered from speaking the truth that all knew existed.

Again, change prevents this. Making the retirement age mandatory with twenty years of service and at fifty years of age for all employees except the head of the organization who should be required to retire at sixty would also facilitate mobility, flexibility, dynamism and progress within an organization. Further, it would increase the incentives of younger employees on their way up the ladder. Retirement benefits should be no issue. First, it is not a country-serving issue but a selfish consideration. Second, doors can be opened to the Director to secure satisfactory employment elsewhere in government or industry. If he is a lawyer, then law practice is open to him at which he would likely make far more money than if he had remained Director of the FBI.

II. GUIDELINES—NO SOLUTION

When I was in the FBI we had all kinds of guidelines—manual after manual of guidelines. Everyone was told what to do and what not to do, how to dress, and even to the point of how to shake hands properly—(no moist palms). These guidelines were regularly supplemented throughout the year by additional guidelines or instructions sent to the Special Agents in Charge of all our offices.

When these men came in to talk to J. Edgar Hoover, at intervals, they received verbal guidelines from him with some gratuities added. When men came in on schedule for two weeks of In-Service (re-training) they were stuffed with guidelines until they bulged with them. Special conferences held added still more.

I ask you what good did they do? We had clear and repeated guidelines never to violate the law even to getting a traffic ticket "fixed." What came out of these crystal clear guidelines?—burglaries, opening of mail, harassment, forgeries, political activities, and so many other known related negative activities it is pointless to list them. Why did this happen? Because it was also made clear to us that intelligence is invisible warfare; that this is United States government policy; that it is the policy of all nations; that warfare knows no guidelines or laws; that we were in fact comparable to soldiers on the battlefield engaged in a vast, intricate life and death struggle.

We used to joke in the FBI that the guidelines were only for the protection of J. Edgar Hoover if something went wrong, but he never intended them to be abided by or serve as protection for the men. If an agent violated one of them and got caught (this was the one great crime)² Mr. J. Edgar Hoover could very solemnly and even with piety point to the guideline he had formulated which this rascal of an agent had violated and he, Mr. Hoover, would fire him at once for certainly he was not going to tolerate any of his highly ethical guidelines being violated. The solution of the problem is not in guidelines alone, although some are necessary for clarification purposes.

Too many meaningless ones have been already on the record. Something else may be needed not as guidelines per se but as unmistakably clear definitions. Define precisely what Congress does and does not want done and how it is to be done. We could learn something here from the importance the old scholastic philosophers attached to correct definitions. It was a form of logic for them.

III. EXHAUSTIVE, OBJECTIVE, INTERNAL ANALYSIS OF FBI NEEDED

The FBI should be given an honest, comprehensive, objective, penetrative, administrative and operational analysis, sweeping away the barnacles, the cobwebs, the foolishness, and the obsolescence of forty-eight years of dictatorial, dogmatic leadership. Open the windows and let in fresh air, abolish fear of dissent and open up minds, let informed imaginations of the men have full play in formulating policies and everywhere encourage *vision*. ("For where there is no vision the people perish" and so does an organization).

This is what happened to the FBI under J. Edgar Hoover while Congress slumbered. To paraphrase the poet Browning: "Hoover is in his Office and all is right with the nation." The great and urgent need is to bring the FBI "screaming and howling into the 20th Century." This cannot be done by its leaders who utter unctuous platitudes about guidelines and other matters before Congressional Committees, not wanting to, or refusing to bring out the entire truth about the FBI. It cannot be done by giving lip service to change and serving up on a public relations platter, superficialities, when what is needed are changes that are fundamental, reform with substance and reorganization with talented leadership. Streamline the FBI, cut the Budget more, reduce the personnel from 8500 to around 5000. This will eliminate the fat and make for lean efficiency. This can be done and ways and means are available for doing this.

This can be done by returning to local, county and state law enforcement agencies, work which is now being done unnecessarily by the FBI. Authorities agree that the solution of crime is actually a local problem to be solved on the local level. Limit the FBI to the investigation of interstate organized crime and to truly major cases of an interstate nature of national importance.

Search the nation for the most talented Negro police administrator and make him Assistant Director of the General Investigative Division of the FBI which handles general crime as opposed to organized crime which is handled by the Special Investigative Division (or was when I was in the FBI). We do not now have any such Negro FBI official and one is long overdue. Negroes also were barred from employment as Special Agents in the FBI from 1924 until Robert Kennedy became Attorney General in the 1960's.³

Remake the FBI Laboratory so, instead of being mainly a sterile, tourist show-place, it will become a first class, up-to-date scientific Laboratory actually de-

² Because it embarrassed Mr. J. Edgar Hoover, not because the act was unlawful or inefficient.

³ This appointment would make some small amends for this grave injustice suffered decade after decade.

signed for the first time to be a productive, effective aid to the FBI and all other law enforcement departments around the nation—local, county and state. Put an immediate end to considerable manpower expended on self-publicity, public relations, propaganda and other useless, costly activity which has gone on for years and still does, although it will be denied. These are just a few examples of what needs to be done to reduce personnel and the Budget.

IV. INSURE ADEQUATE DECENTRALIZATION OF LAW ENFORCEMENT

An analysis, as just described, would be well worth the time and effort expended if done professionally and in depth by an outside force of knowledgeable men not now or in the past connected with the FBI. It could guarantee necessary decentralization of law enforcement (there are too many and too large a collection of Federal investigative agencies) in the United States that would benefit the nation for generations to come.

It would also throw up an effective barrier against the slow, almost imperceptible growth of a national police force which we certainly do not want. We already have a kind of substitute quasinalional police force in the existence of the FBI National Police Academy system. As you know, this Academy was established in 1935 and was at the time and still is a fine idea. Fine ideas, though, given time enough, have a way of becoming "unfine" unless controlled. This FBI Academy has been inviting select officers from all over the nation (and later some from some foreign countries) to come to FBI Headquarters, Washington, D.C. (and Quantico, Virginia) for training, basically as instructors (in that they return to their Departments and often instruct on what was learned at the FBI) and administrators. Many thousands have passed through such portals and courses. Being graduates of the FBI Academy, these men have been regularly promoted in their Departments.

What does this mean in practical, working level terms? It means that all over our nation these men are "FBI men", trained, disciplined, and taught carefully loyalty to the FBI. We retain regular liaison with them. It is to these men we go when we want assistance from them, their men, or if they are strategically located from their Department. They have been uniformly willing to do what we ask, whether it be regular or special services. They have been our eyes and ears in police circles and beyond, all around the country, although this fact is not overly publicized, if at all.

I suggest that right here we have the *germ* of a sophisticated, national police force, or at least a valuable national auxiliary to the FBI serving a similar purpose. Therefore, controls should be considered in this area to see that fifteen or twenty years from now it does not get out of hand and become a problem to democratic values. (I am not suggesting at all that it is a problem today because I have a high regard for the FBI National Academy concept). Much depends, of course, on the kind of leadership we have, and the controls established for the years ahead. But, now is the time to look ahead and to do something preventive, instead of "locking the stable after the horse was stolen."

V. ENTIRELY NEW LEADERSHIP

The events of the immediate past and in particular the developments of the past few weeks should put the need for new leadership beyond question. How much more do we need to witness before action is taken? The litigation relative to Clyde Tolson's will is appalling and has widely shaken the faith of citizens in the present FBI leadership.

It is suggested the next Director certainly should not be selected from the present FBI or be a former member of the old FBI. Consideration could be given to selecting the Dean of a Law School, a nationally known judge or a nationally known lawyer of demonstrated ability, integrity, leadership, industry and vision.

VI. INTELLIGENCE OPERATIONS SHOULD BE SEPARATED FROM CRIMINAL INVESTIGATIONS

This should be done and the FBI returned to what it was originally structured to do and still remains structured to do, expressly to conduct investigations relating to the violation of certain criminal laws. (Among other things this would reduce the gigantic growth and power of the FBI substantially and would remove it from politics.)

Additionally, the efficiency and control of both criminal and intelligence investigations would be markedly improved.

We are the only major nation in the world which has not done this. And in view of what has happened during the past four years it is clear we have no monopoly on collective morality.

Men and women selected for intelligence work should be screened with great care and required to have, among other things, an excellent educational background in liberal arts or the humanities.

A separate security intelligence agency should be a small, independent highly specialized organization, not in any Department, with a Director nominated by the President and confirmed by Congress. A separate Board should be established, selected by the proper vehicle of Congress but made up of knowledgeable, talented private citizens representative of the major segments of our social order. The Board should be to Domestic Intelligence what the President's Foreign Intelligence Advisory Board is to intelligence abroad but it should be more than this. This Board should be responsible for direct supervision and control of the new intelligence agency and answerable to Congress.

It could consist of five or seven members serving three year terms. Among other things, it could conduct all liaison with both the White House and Congress. The Board could be called The Congressional Domestic Intelligence Board. The FBI, of course, would remain in the Department of Justice. This is the first choice. If this cannot be done now then the current FBI security intelligence activities should be removed from the FBI and merged with the Central Intelligence Agency (CIA).

VII. CONGRESSIONAL OVERSIGHT COMMITTEE

Rightly or wrongly I have very limited confidence in a joint congressional oversight committee of investigative-intelligence agencies. Public office holders come and go. They are weighed down with many other duties. Such a committee would again leave the door open to the acids of politics eating into the fabric of our investigative-intelligence community. Among other things, there would be too much self-serving reciprocal assistance rendered—and leaks.

VIII. INSPECTION SYSTEM ESTABLISHED

A capable, knowledgeable, industrious, objective, thorough, courageous and honest, modern inspection system should be established to regularly inspect all investigative and intelligence agencies of the Federal government. (A modern inspection system for all departments of government might be the ideal but probably not feasible at this time). It would take hard work and brains to get it started but once perfected it would pay extremely rich dividends for our government, generation after generation. It could be the most important step taken by Congress in this matter. We all know that our government today is mismanaged, it squanders money by the billions, waste is incalculable, lack of operational precision and efficiency, with some few exceptions, is everywhere. Multiple abuses are too many to catalog, laziness is prevalent (except for the ever-present industrious, responsible, small minority that always carries the burden and gets the required work done), employees increase and solutions to problems decrease, and perhaps worst of all are the armed services in time of peace, and so it goes.

As we have noted, an inspection system for all of government may not be feasible at this time, therefore we would concentrate on the Federal investigative-intelligence community. It must be comprised of knowledgeable, independent, outside body of men and women who can go into any above-described organization at any time, unannounced, with the authority to review, study, analyze firsthand any file, record, document, methodology, means, ends and results, and issue a report on its findings along with recommendations for dismissals, disciplinary measures, transfers, and recommendations for any other changes for the good of the organization inspected, and thereby for the good of the country. The head of the Inspection System (independent of all departments) should be selected by Congress and would be the key person in setting up the System and selecting personnel.

The report should be submitted to the proper joint Committee of the Senate and House for final decisions and actions.

Such an Inspection System, properly constructed and operated, could contribute infinitely more in the way of practical, constructive, productive results than all the legislation and guidelines that the White House, Congress and the Attorney General could formulate out of conflicting speculation and jealous competition. All this talk about more and more guidelines falls narrowly short

of being ludicrous. At times it appears that the adroit FBI has sold the Department of Justice a "bill of goods." Nothing would please the current leadership of the FBI more than to have all Congressional Committee efforts wind up with "just more guidelines." This would mean that once again the "beloved" status quo will be retained and the fearful threat of real reform and reorganization eliminated.

IX. REDUCE THE NUMBER OF FOREIGN LIAISON OFFICES TO TWO, MEXICO AND CANADA

These are very important and necessary offices because of the boundary lines and border crossings of both criminals and hostile intelligence agents. What FBI work needs handling in other foreign nations can be done by the Central Intelligence Agency or by the Department of State, which is the case now in the vast majority of nations where there are no FBI Liaison Offices. I had charge of these foreign offices for ten years and I am well aware of how easily this country could get along without them, and the millions of dollars that would be saved for more urgent practical and useful purposes. These foreign assignments are super-plush assignments from which no man wants to return.

Therefore, some very strong, seemingly reasonable and plausible justifications have been and can still be presented to keep these offices open. These "justifications" are like an imitation diamond. They sparkle, glitter and attract but like an imitation diamond they do not stand up under any honest, cold, incisive analysis.

X. FBI MEN ON CAPITOL COMMITTEES

The practice of having FBI men serving on different committees at the Capitol as has been done for years is a bad practice. If it has not already been done, the practice should be terminated. It contributes to entangling the FBI in politics, making lobbyists and agents of influence out of these men in behalf of FBI goals. Lastly, too much gossip on personal conduct has been carried back from the Capitol to the FBI by some of the men assigned there. Especially wrong has been the assignment of FBI men to the Appropriations Committee.

XI. USE OF FBI TO INSTILL FEAR

The use of the FBI to instill fear in the minds of the American citizens should be discontinued. With J. Edgar Hoover, the Communist Party, USA, among other things, was the tremendous "threat" to our very existence, and he successfully frightened the population with his alarming statements, even though at no time was the Communist Party, USA, a serious threat to the destruction of our government.

Today, FBI leadership is using another bogeyman to create fear across the land. It is "Terrorism." It is a serious matter if only one person is killed by a terrorist but it should be seen in perspective and not used to create fear. If one contrasts the number of people killed in a year by terrorists in the United States with the number killed by automobiles the difference is colossal. Yet, the automobile and its drivers are not being used to make our population shudder with fear.

Crime in general is another tool for causing fear (and getting appropriations). Director Clarence M. Kelley of the FBI said in the January, 1976, Law Enforcement Bulletin: "A steadily rising volume of crime creates an atmosphere of fear haunting all levels of society." Of course, crime is a problem. Why use it to instill fear into people?

XII. THE "PREVENTIVE" CONCEPT

There has been much talk about allowing "preventive" inquiries or investigations to be made, not waiting for a law to be violated. As we know this is a complex issue and something of merit can be said on both sides of the issue.

First, it reminds me of the old saying "The devil can quote Scripture to his own advantage." So, too, with the "preventive" concept. It can be quoted by a person who does not mean well, who wishes to use the "preventive" concept to cloak what he knows will be unlawful actions. In short, the human equation being ever present it clearly opens the door to abuses. Who is to draw the line and say "preventive" action is not to go beyond a certain point? Who would know if it did go beyond the designated point? What yardstick is to be used to measure the need, the scope and the limitations of the "preventive" concept?

On the other hand, "An ounce of prevention is worth a pound of cure." If the "preventive" concept can in fact be effectively controlled and if it can, on occasions, prevent murder, bank robberies, kidnappings, rape and vicious assault and battery in the field of criminal investigation, and in the field of intelligence prevent hostile nations from reaching successfully a variety of major espionage-intelligence targets, then, can we lightly brush it aside? I do not think so.

Yet, because of the dangers to our values which are present in the "preventive" concept, a hasty, ill-considered decision would be unwise. Is it possible that a committee of learned professionals make an exacting study of this issue in depth and recommend whether or not the "preventive" concept can be safely employed under carefully controlled conditions in only major cases of unquestioned importance to our country?

XIII. MONEY AND MANPOWER ALONE NO SOLUTION TO PROBLEM OF CRIME

The FBI has been growing steadily in cost and in manpower year after year. Just a few years ago it had 5000 agents. Now it has, as previously indicated, 8500 men with a total complement of over 20,000 employees. Its budget has reached astronomical figures with many millions of dollars being poured into it year after year without anyone raising germane questions. Yet even the FBI admits that crime keeps increasing rapidly. Obviously, giving the FBI more money and men is not the solution to the problem of crime. There is a solution, and it can be identified and its elements delineated and acted upon if there is a will to do so.

XIV. INVESTIGATIVE AGENCIES IN THE ENTERTAINMENT FIELD

The FBI television show should be discontinued. Federal agencies should not be engaged in this type of activity which is not educational because it does not have a purely factual basis. It is largely fictitious. The FBI should not be in the entertainment field and waste its personnel in anything so unimportant. The program is largely a self-serving, publicity act functioning as part of its vast public relations program. Such a public relations program is needed and utilized only where there is serious operational inefficiency and failure. Successful investigations speak for themselves and need no advertising.

XV. OPEN UP FBI FILES TO APPROVED AUTHORITIES

In the past, the FBI has taken the position that no person has a right to look at FBI files he be a President, Cabinet officer, Senator, Representative or a member of the Department of Justice or their representatives. Changes now, of course, are being made. My main point is this: There never again should be in this country an investigative agency that takes the position that only its members can look at its files. Like money, this is the root of all evil in the FBI second to the repressive cult of J. Edgar Hoover of which it was a part.

Better than legislation would be an inspection squad of knowledgeable men, selected by the afore-mentioned Board and answerable to it, that would periodically go into the FBI and the new intelligence agency unannounced and conduct the most exhaustive examination possible of its structure, cases, investigative techniques, overall operations, et cetera. The same should apply to any other Federal investigative agency. Each periodic examination or inspection made honestly, professionally, would do more than anything else to see to it that our investigative agencies keep within the law and steer clear of abuses of any kind. Likewise such an examination would do much to determine whether these investigative agencies were operating efficiently or inefficiently.

In the past we have had to take the word of officials of investigative agencies and no official is going to say that he is inefficient or his organization is. We must have objective outsiders to make this determination. Let no one say that we cannot find such men who would be just as reliable and trustworthy and capable of protecting classified materials as members of these different investigative agencies.

Even high school graduates, clerks, typists and stenographic personnel, have for decades handled the most sensitive and highly classified materials of the FBI. We could not get the work done without them. Therefore, will our current FBI officials continue to be so illogical and adamant, yes, and even arrogant, as to insist that a few carefully chosen, loyal, experienced, educated adults of unquestioned integrity cannot be entrusted with classified FBI material and thousands of inexperienced adolescents can be? Significantly, some of these

young people, through the years, did give classified materials to those outside the FBI who had no moral or legal right to possess this information.

Could this be an entirely fallacious line of defensive reasoning on the part of FBI officials to prevent properly authorized members of Congress and their staff members or selected non-government laymen from knowing the actual truth about FBI operations? The entire truth is not found in the statistics issued in FBI publications or presented before the obedient Appropriations Committee, truth which can no longer be concealed but rather opened up before objective analysts. They would be analysts who are professionally qualified to study both the FBI successes and failures, coordination and lack of coordination, efficiency and inefficiency, rights and wrongs, necessary and unnecessary work, fact and fiction, cooperation and non-cooperation, economy and waste, protection of civil rights and the violation of civil rights, defense of the innocent and the character assassination of the innocent, lawfulness and unlawfulness, honesty and dishonesty, modern and obsolete procedures, the real organizational self and its image making, flexibility and dogmatism, effective and ineffective training, non-discrimination and discrimination, rational and irrational discipline, what is scientific about the FBI Laboratory and what is wasteful showmanship, bank robberies solved and bombers apprehended, illegal espionage agents indentified, and kidnappers arrested, plus all who got away, and the cases remaining unsolved in these and hundreds of other categories.

This, it is suggested, is the only way to know the complete truth of the FBI. Without all this factual knowledge there can be no worthwhile legislation, re-organization, reform, direction or control of the FBI by Congress or the White House or by any other group. With this knowledge and subsequent basic, far-reaching changes we can have, for the first time, and actually efficient FBI, a silent productive service which can be respected and will deliver to the taxpayer results equal, or even better than equal, to the costs of its operations. Is this too much to expect from Congress?

NEW YORK UNIVERSITY,
SCHOOL OF LAW,
New York, N.Y., February 23, 1976.

HON. ABRAHAM RIBICOFF,
Chairman, Committee on Government Operations, U.S. Senate,
Washington, D.C.

DEAR SENATOR RIBICOFF: This is in reply to your letter of February 6, 1976, requesting my comments on six important issues concerning congressional oversight of the governments' intelligence activities. Because of the exigencies of time mentioned in your final paragraph, I dictated a draft of my reply on February 16 to your staff. This final version of my views is wholly consistent with the earlier draft, except as to Question 4, where I have made certain modification.

Question 1. Are constitutional principles violated by requiring each intelligence agency in the Government to keep a congressional committee "fully and currently informed" about its activities?

Answer. I do not believe that this requirement violates constitutional principles. The Congress has a well-established right to be "fully and currently informed" about governmental activities, and I know of no principle which would carve out an exception for intelligence activities. True, there would be some inconvenience for the government, but this would not seem to a level that would be sufficient to outweigh the congressional duty to be informed.

Question 2. Are constitutional principles violated by prohibiting the use of any previously appropriated money for significant covert actions, unless a separate Senate committee, or joint committee, receives notification of that proposed activity prior to its execution?

Answer. If the Congress included in an appropriation act a requirement that the use of funds for significant covert activities is conditioned on notification prior to execution, I believe this would be a valid exercise of power. Once again, the Congress would be relying on its undoubted power to be informed of executive branch activity, and the fact that this is required prior to execution of an activity would not seem to me to violate the constitution if an appropriation statute so provided. In such a case, the Congress would merely be conditioning its appropriations, as the Supreme Court on many occasions had held it may do. See, e.g., *Oklahoma v. United States Civil Service Comm'n*, 330 U.S. 127 (1947).

Question 3. Are constitutional principles violated by prohibiting the use of any previously appropriated money for significant covert operations, unless a separate Senate committee, or joint committee, approves such operation?

Answer. This prohibition probably violates the Constitution because it permits a committee of the Congress to exercise operating authority of a kind that seems to be "Executive" in nature. This is very different from Congress merely requiring the Executive to "notify" a committee before acting.

Question 4. Are constitutional principles violated by granting the full House or Senate the power to veto a proposed covert operation?

Answer. This is a close question. It is arguable that Congress can constitutionally grant one House the power to veto a proposed covert operation on the same principle that the Legislative Reorganization Act authorizes either House to veto a proposed Executive reorganization plan. On the other hand, there is a difference between a one House veto of a one-shot Executive reorganization and an ongoing veto power over a series of covert operations. My initial reaction was that this veto power was valid, but further reflection leads me to have doubts about it for reasons similar to my conclusion in paragraph 3, *supra*.

There is a further problem here, which also exists under questions 2 and 3, concerning the possibility of public disclosure of classified information about proposed covert operations. This is a practical consideration of some importance, but I don't think the risk of such disclosure of itself would impair the constitutional power of Congress if it otherwise exists.

Question 5. Are constitutional principles violated by allowing a committee or the full House or Senate to disclose, by majority vote, information labelled classified by the executive branch?

Answer. I believe a committee or (more clearly) one House of Congress has authority to release information that is "classified" by the Executive Branch. The classification system is now set up purely by Executive Order, and does not bind members of the legislative branch. In addition, Congress has explicit constitutional power to keep a Journal of its activities and to make its proceedings public, a power that seems to support directly congressional authority to make public information it seeks to disclose.

Question 6. Are constitutional principles violated by imposing criminal sanctions against congressional staff members who disclose information labelled classified by the executive branch, whether or not such disclosure was made at the direction of a Member of Congress, and whether or not it was made under circumstances which would have been protected under the speech and debate clause if made by a Member of Congress?

Answer. This is a complex question. Initially, it should be noted that it is not a violation of the criminal law to expose classified information unless a statute such as 18 U.S.C. 598 is violated. Secondly, under the *Gravel* case, congressional staff is not protected under the "speech or debate" clause in the same way that members of Congress are. Accordingly, they would probably not be protected under that clause if Congress enacted a statute making staff members criminally liable for disclosing classified information. It would not ordinarily be a defense to a prosecution that the disclosure was made at the direction of a Member of Congress. But this and other questions would depend in large part on the precise wording of the statute.

In view of the shortness of time I have not commented on other questions raised by the Attorney General's testimony of February 6, 1976. But I do endorse the views that he expressed on the necessity for safeguarding individual privacy (pages 9-12). It is essential that the government take what steps it can, consistent with congressional and public knowledge of the activities of the government, to protect individuals from unwarranted invasions of their privacy.

I hope this letter is of assistance to you and your colleagues in your consideration of S. 2893.

With kind regards,

Sincerely,

NORMAN DOESEN,
Professor of Law.

STATEMENT BY RICHARD J. BARNET, CO-DIRECTOR, INSTITUTE FOR POLICY STUDIES

President Ford and most critics of the intelligence community seem agreed that improved congressional oversight is the way to establish constitutional safeguards over the operations of the intelligence bureaucracies and to stop their

unlawful activities. Before one can properly prescribe a remedy, however, one must diagnose the disease. A number of the witnesses before this Committee have, in my view, seriously minimized the threat that illegal covert operations of the intelligence community poses to American democracy and the ease with which clandestine agencies can circumvent and frustrate oversight. Much of the testimony implicitly assumes that the exposure of certain mysterious secrets represents a greater danger to the American people than the breakins, eavesdropping, mail interception, assassination attempts, deliberate deception of Congress, bribery of foreign leaders, and secret wars undertaken by our own intelligence agencies.

Unfortunately, the assumption is not warranted. Within the last five years the intelligence community has provided the rationale, techniques, and in some cases the personnel for a massive and nearly successful assault on constitutional liberties in the Watergate affair and for massive espionage operations against American citizens. It has also participated in a continuing campaign to deceive the Congress and the public in the conduct of a secret foreign policy in direct conflict with publicly stated policy.

The problem, then is fundamentally one of restoring balance to our constitutional system. Restoring the confidence of the intelligence community and keeping secrets, President Ford's chief concerns, are distinctly secondary considerations. If we destroy our own freedom by the means we choose to defend it, we will not be the first great nation to do so.

Whether any system of reform can work depends, in my view, on whether the Congress appreciates the extent to which the operations of the intelligence bureaucracies over the past generation have already corrupted our system. Oversight cannot be effective without first significantly restricting the mandate under which the intelligence community currently operates. Only when Congress has less to watch over can it hope to do it effectively. Specifically, this means that covert action, meaning the secret manipulation of the internal politics of other countries (or this one) and the conduct of para-military operations, as in Chile, Laos, Guatemala and a host of other countries, should be illegal. It is in the interest of the bureaucratic empire builders in the intelligence community to confuse the clandestine gathering of information, on the one hand, and covert operations of a political or para-military nature on the other. But it is in the interest of a Congress genuinely concerned about establishing oversight to make that distinction clear. The principal reason for an administration to carry out secret wars, secret bribery, and secret coups is that the Congress and the public would not tolerate them if they knew about them. Secretary of State Henry Kissinger admitted as much when he was forced to explain why the United States had secretly intervened in Angola. If the CIA retains its mandate to conduct a clandestine foreign policy around the world, with a continuing license, legitimated by President Ford's recent "reform" proposals, to assassinate anyone who is not a "foreign official", Congress could spend all its time investigating the agency and never be able to control its activities.

Legislative oversight can help intelligence officials live within a rule of law only if the law is much clearer than it is now. If covert action were eliminated and the enormous bureaucracy devoted to conceiving, planning, and carrying out "dirty tricks" were disbanded, Congress could assert effective control over the essential intelligence functions, information gathering and analysis. It is impossible to devise machinery to force a bureaucracy with a mandate to commit a broad range of criminal activities to act lawfully.

There is now considerable history demonstrating how easily intelligence bureaucracies with a broad and uncertain mandate can mislead, coopt, or confound members of Congress. The House Select Committee reports, "If this Committee's recent experience is any test, intelligence agencies that are to be controlled by Congressional law-making are, today, beyond the lawmaker's scrutiny." The report then details a campaign of obstruction waged by the Administration of keep vital information from the Committee: "santitized" reports with blank sheets, "dribbling" of requested documents one by one, refusal to testify, attacks on the Committee, delay, etc. If a committee of the House operating in the glare of publicity at a time when the intelligence agencies are on the defensive can be treated in such a manner, it is not difficult to imagine how routine requests for information the CIA wished to withhold would be handled.

Senator Allan Ellender, who was Chairman of the Senate Armed Services Subcommittee charged with CIA oversight, claimed that he knew nothing about the CIA's extensive secret war in Laos. When certain selected members of Con-

gress have become privy to secret information, they have preferred to cooperate with the Agency rather than fulfill their oversight duties. At least one such member kept silent about the CIA's disastrous covert operations in Chile, which did more to hurt the reputation and prestige of the U.S. government than almost anything else in recent years, evidently viewing his responsibility to the intelligence community as a higher duty than his responsibility to colleagues in the Congress or to his constituents. (Allen Dulles told his colleagues on the Warren Commission that he felt he had a duty to lie to anyone except the President to protect an intelligence operation.)

With such a code prevailing there is no hope of making the intelligence agencies accountable. Indeed, members of Congress selected for their "responsibility" act as if they are accountable to the intelligence bureaucracies rather than the other way around. (It has recently been disclosed that some members of the Senate have acted as consultants to the CIA to advise the agency on how to handle a Senate investigating committee.) Members of Congress who see as their first duty to their constituents a responsibility to investigate and expose secret operations abroad which are in direct conflict with stated U.S. foreign policy become the targets of orchestrated public attacks by the intelligence agencies which have special skills in this area, and are threatened with disciplinary action.

There is an arrogant assumption implicit in the position of the intelligence agencies that their secrets are more important than Congress's constitutional responsibility for effective oversight. Mitchell Rogovin, Special Counsel to the CIA says that an oversight committee will get secrets only "if the agency is satisfied that the committee can keep secrets." This assumes that the agency rather than Congress is the legitimate body to decide what should be disclosed and that a non-elected agency rather than the American voter should determine who is responsible or patriotic enough to be trusted. Under such reasoning the presence of a potential critic on the committee, someone the CIA thinks ought not to be trusted with secrets, is reason enough to adopt a "stonewalling" policy. Despite the fact that the serious abuse of authority by intelligence agencies, including their assault on civil liberties at home and their ill-advised and dangerous operations abroad, came to light only by way of "unauthorized disclosures", the Administration now proposes serious criminal penalties for disclosing the very type of information about criminal and reckless behavior in the intelligence community that made the current investigations of the CIA unavoidable.

The fundamental issue is whether the Administration can continue to exert unilateral control over foreign policy despite Congress's constitutional oversight responsibility. The CIA has been used consistently, as its representatives have frequently admitted, as an instrument for the President to carry out policies that he could not persuade Congress to accept. One of the arguments for the widespread covert funding of student, church, and labor groups and the subventions to radio stations and magazines throughout the Cold War was that Congress was too conservative and too subject to the pressures of the McCarthy era to support the liberal or social democratic forces which the Agency wanted to enlist in the fight against communism. Thus our most sensitive secrets surrounding covert para-military activity and internal political manipulation in other countries have been designed to mislead neither the targets of these operations nor the Soviets—both the Laotians and the Kremlin knew well the extent and character of U.S. involvement in Laos—but the American people.

But we cannot have it both ways. We cannot maintain the fiction of a democratic foreign policy and delegate to a secret agency acting for the President the authority to put into practice the very policies he could not persuade the people or the Congress to approve. The Secretary of State has on occasion publicly lamented the interference of the American public and their elected representatives in the conduct of his policy. But it is not axiomatic that foreign policies devised in secret, even by brilliant advisors and carried out covertly by unaccountable bureaucrats, are better policies than those that are debated publicly by leaders who must rely on persuasion rather than deception. The Founding Fathers thought otherwise, and the recent history of clumsy, clandestine, and counter-productive interventions from Vietnam to Angola suggests that they were right.

If oversight is to be effective several crucial steps should be taken:

1. The covert action arms of the intelligence community should be dismantled (not renamed or reassigned to another agency) and the President should be given clear congressional guidelines that he is not to engage in assassination, bribery, covert funding of foreign groups, or para-military operations abroad.

The Congress should enact a detailed public charter of what intelligence agencies can and cannot do.

2. Congress should establish an oversight committee to look into the legitimate activities of the intelligence community in addition to guarding against illegitimate activities. For this purpose it must have complete access to the budgets of the various intelligence agencies and an adequate staff to scrutinize them. Recent revelations suggest that incompetence and bad judgment in the intelligence community are serious problems. (Both flourish in an atmosphere where there is no outside accountability.) In particular, Congress should take the initiative to improve the analysis function of the CIA. For all the expensively procured secret information the intelligence agencies gather they appear to be more surprised by events than, conceivably, they should be. In any event, this is an important question for Congress to determine. The Congress should enact clear guidelines for preventing leaks (from all branches of government, including the White House), without stifling public disclosure of classified information when that is essential, as in the recent past, to prevent the continuation of serious abuses. It would seem appropriate that a responsible oversight committee with rotating membership to maintain essential distance between the committee and the agencies it is investigating could have that authority under a set of clear guidelines. Surely the proposal of the CIA Special Counsel that Congress could release no classified information unless $\frac{2}{3}$ of both houses approved is bound to protect the agencies rather than the public and is wholly unworkable. A reform measure to redress the present imbalance in favor of secret agencies must start from the assumption that members of Congress are as trustworthy and patriotic as intelligence bureaucrats.

3. It is crucial to encourage a new ethos in the intelligence community, a duty to tell the truth to a properly constituted congressional body rather than, as at present, a duty to lie or mislead for the sake of "national security". A few criminal prosecutions for individuals who have committed illegal activities in the recent past would make the point more clearly than any new legislation that intelligence officials must live within the law. Conversely, failure to prosecute such officials has the effect of legitimating illegal activity. In the light of the unaccountably lenient view which the Administration takes toward perjury and other crimes which appear to have been committed by former senior officials of the intelligence community the Congress should establish a special prosecutor's office to investigate and prosecute, where appropriate, crimes committed by members of intelligence bureaucracies.

STATEMENT OF MARK LOCKMAN, LEGISLATIVE AIDE, LIBERTY LOBBY

Mr. Chairman and Members of the Committee: I am Mark Lockman, Legislative Aide of Liberty Lobby. I appreciate this opportunity to submit for the record our statement representing the views of Liberty Lobby's nearly 25,000-member Board of Policy, and also on behalf of the approximately quarter million readers of our weekly newspaper, the National Spotlight.

Liberty Lobby is concerned about the abuse many private citizens are facing at the hands of various government intelligence agencies, and this statement deals with specific activities of the FBI and IRS intelligence. We believe that a careful review of illegal activities of the intelligence agencies will better enable this committee to deal with the problem satisfactorily.

An illegal FBI activity centers on the formation of the paramilitary right-wing "Secret Army Organization," San Diego, Calif. According to testimony in the trial of William Francis Yakopec for bombing a porno movie theater in San Diego, an FBI informant, Howard Berry Godfrey, was a key figure in the formation of this group. Not only did Godfrey organize the group, he also supplied it with explosives and financial aid, given him by the FBI. According to testimony by SAO member Jerry Busch, Godfrey supplied 80 percent of the group's funds, in addition to enticing members to commit illegal acts. Jerry Busch said that Godfrey had persuaded SAO members to bomb buildings, and urged them even to kidnap and assassinate anti-war leaders.

In one instance, Godfrey drove a car from which another SAO member fired a gun into the home of Peter Bohmer, a former California State University (San Diego) professor, wounding Paula Tharp.

In a more bizarre account, informant Godfrey was engaged in planning to assassinate President Nixon, through the auspices of the SAO. The details of this plot

were outlined by Jerry Godfrey and reported in Ramparts magazine: "The idea was to fly a bomb into the Presidential jet as it landed at either Lindbergh Field or at El Toro Marine Base. * * * Another SAO member corroborates this same period, January-February 1972, Godfrey tried to find someone to build a plane that would carry a load of high explosives."

SAO member Busch was so appalled with the idea he immediately quit the group and moved out of San Diego.

According to Busch, Godfrey had several meetings with Donald Segretti (posing as Don Slimms). Busch said that after such meetings Godfrey had more bizarre plans to implement against "those red punks" who were expected to be at the Republican National Convention, planned for San Diego. Godfrey pursued his assassination idea by printing and distributing "Nixon Wanted" posters resembling those on President Kennedy circulated in Dallas only a few days before his assassination.

Godfrey admits to having the posters printed, but claims the assassination idea was not his own.

Liberty Lobby feels it is important to show how the FBI created an organization like SAO for no other reason than to entrap right-wing citizens. If the plan to assassinate Nixon had been implemented, the "right-wing" would have been saddled with complete blame, while Godfrey and Segretti would have disappeared in the hysteria against the "right."

Ramparts reported that after newly appointed FBI director L. Patrick Gray took office he visited San Diego. After his return he was quoted as saying to President Nixon, "Mr. President, there is something I want to speak with you about. Dick Walters and I feel that people on your staff are trying to mortally wound you by using the CIA and the FBI. * * *" (Ramparts)

If the CIA and the FBI had planned to use the SAO as a "fall guy" for an assassination, it appears that further investigation is warranted.

In the Yakopec trial for the porno movie theater bombing, Godfrey admitted on the witness stand that he had sold the bombs to Yakopec. Yakopec was sentenced for one year to life in prison.

The defense attorney for Yakopec said, "The primary force behind the SAO was Godfrey. When things did not happen, he would help out and make them happen.

"We will show you that Godfrey induced a friendless, lonely man (Yakopec) first into his friendship, then into his church and then into his (Godfrey's) army. We will show you that Godfrey organized the Secret Army Organization. Without him there would be no SAO. The FBI provided the money to organize the secret army. Without FBI money the SAO could not have existed" (Attorney Frederick Hetter).

Similarly, the man who was driven by Godfrey to fire shots into Profesor Bohmer's home, Charles Hoover, was also found guilty and sentenced.

In another instance, Calvin Fox was found guilty of perjury for denying membership in SAO. He maintains that FBI agents planted a membership certificate in his personal files.

Mr. Fox explained how Godfrey operated to recruit members into SAO in a letter to Liberty Lobby.

"In March of 1972, a man named Howard Berry Godfrey came to my service station in El Cajon and began to trade with me. He introduced himself as a group captain and organizer of a new type of citizen Army, which he said was to be the successor to the Minutemen that had recently been destroyed by communists in the Justice Department.

"For the next four months Godfrey brought me free literature of the army which he called the Secret Army Organization. He tried every kind of persuasive method to induce me to join and to go with him on night forays against the 'hipples and leftists.'

"I was not convinced of his sincerity, and in fact was highly suspicious of his attempts to sell me guns and surplus items. * * *

"When my wife and I drove to Washington, D.C. in May to march with Dr. McIntire and John Schmitz, two FBI agents came to my station and without due process invaded my private files. Agents Hooper and Peterson were looking for the license number of the car we were driving, so they said. They have 100 agents and 75 staff in little San Diego!

"Upon returning to San Diego from Washington, I tried to find the real reason why the FBI went into my file cabinet. But it was not until early July that the truth was finally known. * * * He gave my membership number as 71407 and my phony name was Charles Thorp (which investigators discovered he had represented himself as over two years earlier)."

To this day, Mr. Fox maintains the FBI agents planted the membership certificate in his files.

Liberty Lobby believes that without the assistance of the FBI, there would have been no SAO, no "right-wing" terrorist activities, and no planned attempt against Nixon's life. The organization was formed for the sole purpose of entrapment. Liberty Lobby in no way endorses or approves of any illegal activities on the part of those involved in terrorist activities.

In another clear entrapment case, the FBI cooperated with local law enforcement officials in financing a Klan bombing in Meridian, Miss.

According to the Feb. 13, 1970 Washington Post:

"The FBI and the Meridian police, bankrolled by an alarmed Jewish community, paid \$36,500 to two Ku Klux Klan informants to arrange a trap to catch two young Klan terrorists in a bombing attempt, the Los Angeles Times has learned.* * *

"Evidence strongly indicates that the Klan members who made the bombing attempt, Thomas Albert Tarrants III, 21 at the time, and his companion, Kathy Ainsworth, 26, a school teacher, were hired into the bombing attempt by two other Klansmen who were paid a total of \$36,500. A former FBI agent who acted as an intermediary was paid \$2,000."

The account revealed how these two Klan members tried to bomb the home of a Jewish businessman, but were ambushed by authorities in the attempt. In the ambush, Kathy Ainsworth was killed. Thomas Tarrants received a 30-year prison sentence. In the original plan, a friend of Tarrants, Joe Danny Hawkins, was to act as Tarrant's partner in the bombing. Just 45 minutes before the bombing, authorities learned that Kathy Ainsworth was taking Hawkins's place.

The Post further reported: "Although Tarrants and Hawkins were suspected of being responsible for much of the violence that had rocked Mississippi, lawmen had been unable to prove that either man had committed any of the crimes and had been unable to find Tarrants to arrest him on a fugitive warrant involving an illegal gun charge."

Intelligence activities of the IRS are both plentiful and illegal. The practice of unlawful surveillance, conspiracy, and selective prosecution characterize the practices of the IRS. The following article, to appear in NATIONAL SPOTLIGHT, by the distinguished authority on IRS Dr. Martin A. Larson, cites prime examples of intelligence activity abuses by IRS:

"At the close of Jim Scott's trial in Fresno on Dec. 14, 1973, warrants were issued for the arrest of Vaughn Ellsworth, Clarie Kelley, William Drexler, and Scott himself on the charges of an IRS undercover agent, James Q. Swanson, a/k/a Jeff Swan, that the defense had smuggled an extraneous paper into a batch of prosecution documents in order to influence the jury and thus tamper with the evidence. All were released on \$5,000 bail each.

"While the government continued to delay and to shift the place of trial from one place to another, the defendants were forced to make six pre-trial appearances at great expense and inconvenience. Finally, in March 1975, the four were to be tried in Los Angeles on the charge of criminal contempt; but, since the prosecution was still unprepared, the charge was dismissed.

"However, the conspiracy count still remained and came on for hearing before Judge Kelleher on May 5. When the government attorney was still unprepared, the judge dismissed this charge also against all the defendants except Drexler, who, not having been properly notified, failed to appear.

"In July, Drexler underwent a 5-day trial in the court of Judge Kelleher, who did everything in his power to secure a conviction. However, after Drexler, with the help of his witnesses, presented evidence, the IRS and one of its principal attorneys, J. J. Jeffries, suffered a disastrous defeat. It was demonstrated that, at the Fresno trial, an undercover agent was actually helping to plan the defense; the government used electronic surveillance illegally in the court room and covering private conferences between Scott and his counsellors; it committed theft in the conference room and of Scott's private papers; it tampered with evidence during the trial; it placed one of its employees on the stand, who perjured herself; it had an IRS supervisor as foreman of the grand jury which indicated Scott; it refused to allow either Scott or Drexler to testify before the grand jury; and Jeff Swan gave perjured testimony in his affidavit and on the witness stand in Los Angeles.

"The jury was out 32 hours and took 32 votes, each of which was 11 to 1 for acquittal. Drexler declared that the one holdout was an IRS agent.

"When he realized what the outcome would be, Judge Kelleher became "sick" and turned over the trial to Judge Byrnes of Ellsberg notoriety.

"When it became obvious that the trial was doing far more injury to the IRS than to Drexler, the judge dismissed the charges against him with prejudice. Again, the silence emanating from the IRS publicity mills following this defeat reverberated like thunder across the mountains and plains of America."

This by no means exhausts the known cases where federal agents, paid by the taxpayers, have engaged in illegal activities for no other purpose than to incite otherwise law-abiding citizens into criminal pursuits, or when federal money has been used in domestic political activity. Another well-known case is that of Roy Frankhouser, who, as a CIA agent acting directly under the National Security Council, directed elements of the Ku Klux Klan, the American Nazi Party and the Minutemen for years in the Reading, Pa. area. A thorough probe into cases such as this is necessary if this committee is to make a proper determination of the facts so that adequate legislation can be drawn up for action by Congress.

An oversight committee will by no means be a cure-all, but in view of the abuses previously mentioned it seems to be the only alternative. To have no congressional oversight for these agencies will result in further loss of individual freedoms.

Thank you again for the opportunity to submit this statement for the record.

PREPARED STATEMENT BY HERBERT SCOVILLE, JR., FORMERLY CIA ASSISTANT DIRECTOR FOR SCIENTIFIC INTELLIGENCE AND DEPUTY DIRECTOR FOR RESEARCH, FEBRUARY 26, 1976

A strong and effective intelligence community is perhaps the most vital component of our national security system. Without accurate and timely information our foreign and security policies and operations will be misdirected, ineffective, wasteful, and all too often counterproductive. The revelations by the press and from Congressional investigations in the past two years have unfortunately demonstrated that we have had intelligence failures and been wasteful of our resources; most importantly, they have shown that our intelligence and law enforcement structure from the President on down has tamped on the privacy and rights of citizens at home and damaged American influence abroad. However, in the course of these disclosures, the secrecy of some sensitive intelligence sources and methods may have been compromised.

The time was therefore overdue for a reorganization of our intelligence community and for a codification of what activities should and should not be allowed. Procedures need to be developed to prevent a repetition of past abuses without important damage to our essential intelligence capabilities.

On February 18, President Ford issued his plan to reorganize the intelligence structure, to safeguard citizens' rights, and to maintain necessary secrecy. This plan which goes into effect on March 1 can be divided into three parts:

- (1) A reorganization of the intelligence community streamlining the command structure and assigning responsibilities to the various elements of the intelligence community;
- (2) An Executive Order which established the procedures and restrictions for the conduct of foreign intelligence activities; and
- (3) A proposed legislation that would establish criminal penalties for the disclosure of information that might compromise intelligence sources and methods.

The guidelines regulating the foreign intelligence and counter-intelligence activities of the F.B.I. will be issued by the Attorney General Levi within ninety days.

Management of Intelligence Community

The President's plan consolidates the top management of the intelligence community by establishing a three-man Committee on Foreign Intelligence (CFI) which reports to the National Security Council, is chaired by the Director of Central Intelligence (DCI) and includes the Deputy Secretary of Defense for Intelligence and the Deputy Assistant to the President for National Security Affairs. While the DCI has long been the titular head of the foreign intelligence community, his authority over the other intelligence agencies has always been very limited. By the new order, however, as Chairman of the Committee, he will

now have control over the budget and resources allocation for the entire national foreign intelligence program. If the new DCI, George Bush, succeeds in exercising his assigned responsibility, this could result in major improvements, not only in the management of our intelligence resources but also in the quality of the intelligence available to our top policy makers.

Unfortunately, neither George Bush nor Robert Ellsworth, the defense representative, have much experience in the complex jungle of the intelligence world, and only time will show whether they will be able to apply the necessary firm hand. Reorganizations have been carried out before, but the results have been less than earthshaking. For example, in 1961 the Defense Intelligence Agency (DIA) was established as a centralized coordinator and producer of defense intelligence, but the actual result was only to create a fourth military intelligence organization and increase the size of the already mammoth establishment. All too often this new bureaucracy only gave added weight to Pentagon biases on intelligence community operations and analyses. Survey after survey, including the recent ones by Congressional committees, have recommended the reorganization or elimination of DIA, but unfortunately President Ford's new directive leaves this agency untouched.

The intelligence community has assets for collecting and analyzing information which far surpass those which have ever been available before. Science and technology have not only provided the opportunity to collect more and higher quality information through such means as satellite photograph and electronic monitoring, but have also given greater opportunities to sort out and analyze the vast amounts of data now available. Yet the record of our intelligence successes and failures leaves lots to be desired. All too often priorities have been inadequately established and implemented. All too often the information, even when available, has not been gotten to the policy makers in a timely and usable fashion. Finally, all too often the policy makers have shut their ears to the intelligence given them.

The failure to have advance warning of the first Indian test of a nuclear explosive in May 1974 can only be explained by the low priority given proliferation of nuclear weapons as an intelligence target. The failure to anticipate the October 1973 Egyptian and Syrian attack resulted not so much from a lack of information as from an unwillingness to admit that preconceived political estimates could be wrong, and from the inability to get the important information indicating a possible attack to key policy makers. In Vietnam, the CIA on occasion after occasion expressed a gloomy picture of the military and political situation, but our leaders turned off their hearing aids on anything that cast doubts on the success of their policies.

The Ford reorganization will not automatically overcome such difficulties, but it does provide opportunities for improvement. An experienced, strong, and independent Director of Central Intelligence with no subjective position to support could streamline our intelligence organization, direct its assets toward priority goals, and assure that the finished products are considered seriously by governmental leaders. He could restore confidence in the intelligence product. However, at best this cannot be done quickly since it will be necessary to reestablish the integrity and prestige of the intelligence community, particularly the CIA, and this is now at a very ebb. Whether it ever succeeds will depend on the continued leadership of the Director of Central Intelligence and the willingness of senior governmental officials to use intelligence as it should be used.

Restrictions on Intelligence Activities

Following the first publication of the CIA horror stories, the Rockefeller Commission investigated a number of areas where CIA was reported to have carried out operations which either went beyond their charter or exceeded the established concepts of personal privacy or interfered with civil liberties. The Senate Select Committee extended these investigations to other areas and other agencies, particularly the FBI and the National Security Agency. Innumerable examples have been uncovered where the intelligence and law enforcement agencies have, under the guise of national security, broken the law or transgressed on the basic rights of citizens. For example, the CIA carried out for years widespread opening of mail. The FBI, and to a lesser extent the CIA, carried out surveillance and electronic eavesdropping on American citizens, minority groups, and even the press. The National Security Agency (NSA) moni-

tored international communications of U.S. individuals and business organizations and distributed material collected to other elements of the Government. Such operations were so extensive as to raise the question whether Americans had any privacy left. The 4th Amendment was a shambles. The need for corrective action is unquestioned.

Recognizing this Sec. 5 of President Ford's Executive Order spells out restrictions on intelligence activities, but unfortunately, these restrictions are so often hedged with exceptions or qualifications that rather than a corrective they could become a justification for what before had been questionable. The following three examples are indicative:

A foreign intelligence agency is not to engage in physical surveillance against a United States person *unless* it is directed against any of the following: "(i) a present or former employee of such agency, its present or former contractors of their present or former employees . . . , or (ii) a person who is in contact with either a present or former contractor or employee." These are only a few of the many exceptions, but it would hardly seem that this Order would prevent the illegal surveillance of the past.

Electronic surveillance to intercept communications is proscribed *except* for "lawful electronic surveillance under procedures approved by the Attorney General." If another John Mitchell were Attorney General, would we feel confident that our rights were being observed? Judicial oversight would at least help a little.

The collection of information concerning the domestic activities of United States persons is forbidden *except* "information concerning corporations or other commercial organizations which constitutes foreign intelligence or counterintelligence." This exception would certainly legitimize the collection of economic data on almost any U.S. private industrial group. Another exception allows collection of "information about a United States person who is reasonably believed acting on behalf of a foreign power or engaged in international terrorist or narcotics activities." Any intelligence organization could excuse the maintenance of any dossier on the basis of this exception.

The entire regulation seems more designed to authorize rather than restrict what had been previously of questionable legality. Operation CHAOS, in which the CIA collected, collated and distributed information on the peace and youth movements in the late 1960s, could easily be justified under this regulation. The preparation of the psychological profile on David Ellsberg and the supply of assistance to Hunt in connection with the break-in of Ellsberg's psychiatrist's office would now be permitted by a clause which allows a foreign intelligence agency to provide "specialized equipment or technical knowledge for use by any other Federal department or agency."

Employees of the United States Government are prohibited from "conspiring to engage in *political* assassination," a direct outgrowth of the disclosure of a plan to assassinate Castro. But does this mean that nonpolitical assassination is implicitly permitted?

In order to monitor the legality and propriety of intelligence operations, President Ford established a new three-man Oversight Board, which would take reports from the Inspectors General and General Counsels of the intelligence community. The Board would report to the Attorney General and the President any activities that raise serious questions about legality. Does President Ford seriously believe that this would stop any of the illegal activities of the past? Almost all of these were carried out with the approval of the President, and in fact, in many cases the President or Attorney General were the sponsors of these activities. President Ford's hope that the American people will elect a President who will not abuse this responsibility is not very reassuring. Since the new regulations will involve fine points of interpretation as to what is allowed and what not allowed, it seems unlikely that any junior member of the intelligence community will succeed in lodging an effective protest through the channel of the Inspector General, to the Oversight Committee, to the Attorney General, and to the President. Would this have prevented the White House from getting help from the CIA in the Ellsberg case or in maintaining vast information files on American citizens in Operation CHAOS?

Furthermore, the members of the Board appointed by President Ford are all veterans of the Cold War. Robert Murphy, the Chairman who has been a member of the President's Foreign Intelligence Advisory Board when many of

the questionable operations were taking place, in an NBC interview recently endorsed as legitimate, covert actions by the U.S. to replace foreign leaders in countries where our interests were being damaged or subverted or injured in one way or another. It seems very unlikely that this group with this background and reporting as it does, will provide much confidence to the public that its rights will now be observed or to foreigners that the U.S. is not illegally trying to overthrow their governments.

Finally, it is a basic error to try to correct the abuses of the past, many of which were the direct result of Presidential action, solely by Executive Order. If we are to re-establish confidence in the integrity of our intelligence establishment, then there must be some legislative action so that another President cannot change the rules to suit his own perverted objectives. Then if there are transgressions, there will be legal procedures for insuring accountability at all levels of the Government. This will be the most important incentive for insuring that citizens' rights are respected.

Secrecy

Taking advantage of the backlash resulting particularly from the leaks of the secret House Intelligence Committee's Report, President Ford has proposed an Amendment to the National Security Act of 1947 to apply criminal penalties for divulging information relating to intelligence sources and methods. The law would apply to officers or employees of the United States, members of the Armed Services, contractors of the U.S. Government, or employees of such contractors who have been authorized to possess such information and communicate it to any person not authorized to receive it or to the general public. Since many thousands of people have access to intelligence, this law would affect large numbers of persons. It would not apply to members of the press who may have been recipients of the leak, but reporters could now become vulnerable to contempt charges if they refused to divulge their sources.

The limitation to intelligence sources and methods is almost no limitation at all since the publication of almost any intelligence can be construed as compromising the source of that information. For example, one item in the recent public controversy over possible Soviet violations of the 1972 SALT Agreements involved the Soviet construction of additional silos which could be either missile launchers in violation of the Agreement or permitted command and control centers. Clearly the data on this construction was obtained from satellite photography, which is still considered classified by the intelligence community despite widespread disclosure of its existence and even discussions with the Soviet representatives during the SALT negotiations. Furthermore, since the nature of the specific construction has been formally raised with the U.S.S.R. in the Standing Consultative Commission, it is only the American public from whom the information is being withheld. Yet under the proposed statute, an individual communicating such information would be criminally liable because it clearly relates to still-classified intelligence methods. The law would essentially place a gag on the tens or even hundreds of thousands of persons in the Government who have access to any intelligence since most of them would have no way of judging when the release of intelligence compromised sources and methods. The press would be similarly constrained by the fear that any publication of intelligence not included in official releases would leave them open to judicial action to disclose their sources.

Furthermore, the proposed law authorizes prior restraint of any person judged by the DCI to be about to engage in any act which will constitute a violation, a principle which was overturned by the Supreme Court in the Ellsberg case. Since any hearing by a court to determine whether the information was lawfully classified will be held *in camera*, there will be no way for the public to have an input into the rightness of such classification, and the court will find it very difficult to invalidate the classification by finding it was "arbitrary and capricious and without reasonable basis in fact."

Secrecy is an important requirement for intelligence. Revealing the details of a conversation involving a small number of foreign officials could endanger the life of the source if it were human or disclose the existence of electronic surveillance if the room were bugged. Our intelligence in many areas would dry up if there were no restrictions on publication. Publishing the names of individuals who may—or may not be—associated with intelligence abroad is unconscionable. However, in many cases, such as the satellite photography example referred to earlier, disclosure will not compromise either individuals

or future intelligence capabilities. This is particularly absurd when such capabilities are discussed with the Soviet Union but withheld from the American public. Placing an across-the-board gag on all intelligence information is not a sensible approach. It can only accentuate the all-too-prevalent habit of senior Government officials to release selectively that intelligence which they wish to use to justify some specific policy. The custom for the Pentagon to put out at Budget time scare stories about extraordinary new Soviet weapons is so well known as not to need elaboration.

Sound information on foreign developments and activities is not a requirement for policy makers alone. The public must have such information if they are to provide informed support or, when needed, criticism of such policies. No better example of this need can be found than the previously mentioned case of the SALT violations. The Administration cloaked this problem in a dense veil of secrecy. Persons opposed to any arms limitations spread rumors of Soviet violations so that the public, which is innately suspicious of the Soviet Union, has become convinced that cheating was occurring. Now there is a general consensus, despite belated attempts by Administration officials to clarify the situation, that the entire SALT process is inimical to our security; our ability to obtain future SALT Agreements has been seriously compromised.

Moreover, the proposed Ford rules are probably unworkable and will eventually break down. It would be almost impossible for the average individual to know when he is divulging information relative to sources and methods. Secretary of Defense Rumsfeld, following the practices of his predecessors, disclosed in his recent Annual Report that the Russians are deploying three new classes of missiles. No question is raised about the propriety of this, but nevertheless, the information clearly comes from still-classified photographic satellite systems. Since this source has once been disclosed, does this absolve other individuals from any liability for disclosing other information coming from this source? The opportunities for abusing this law are tremendous, and the judicial system is not geared to make classification decisions *in camera* on national security matters.

Our intelligence community has gotten along quite satisfactorily for more than twenty years without any such secrecy act. At least until recently, our intelligence collection techniques have not been compromised. The U-2 operated successfully for four years until Gary Powers' plane was shot down in May of 1960. Communications and other electronic intelligence have continued for twenty years to provide excellent information on Soviet missile testing. None of our intelligence failures can be attributed to leaks. In fact, it is hard to make a case that the spate of intelligence leaks of the last two years has seriously compromised any specific intelligence source or method. Even the publication of the House Intelligence Committee Report in the *Village Voice*, which is probably the most flamboyant example, does not reveal significant information on sources and methods that was not already widely known by foreign intelligence agencies. The greatest damage to our intelligence capabilities has come from the revelations of questionable activities by these agencies and by top Governmental officials. The illegal operations of the U.S. Government in Chile have probably done more harm to our intelligence capabilities and indirectly exposed more intelligence operatives than all the leaks of intelligence. The corrective here is not burying such abuses in secrecy but in correcting and avoiding their repetition. Cleaning up the horrors of the past will be a more effective way of protecting intelligence capabilities than any broad legal gag on all those with access to intelligence information.

Conclusion

Thus, an analysis of President Ford's overall plan shows that he has his priorities inverted. The new restrictions on intelligence activities are so bound up with exceptions and qualifications that they will give no one any confidence against a repetition of earlier abuses of personal privacy and civil rights. Combining this confused Executive Order with a secrecy act which would make anybody wishing to blow the whistle vulnerable to criminal penalties will only nurture suspicions that nothing has changed. It would have been far better had President Ford instead proposed legislation establishing criminal penalties for persons at all levels participating in activities which infringe on civil rights or violate the law. President Ford's Oversight Committee is a weak reed to rely on for adherence to proper standards of conduct. An independent public com-

mission with an investigative staff, which might report to both the President and Congress and make public reports, would be a better body to rely on when questions of the propriety of intelligence operations were raised inside or outside the Government than the proposed Oversight Committee which reports only to those officials previously most culpable. Then there would be far less temptation to divulge important secrets, and existing administrative procedures could be relied on for handling important classified intelligence material rather than the proposed Secrets Act.

The consolidation of the management of the intelligence community is a useful step, but one would be more satisfied with it if the individuals at the top were not so deeply politicized. Both George Bush and Robert Ellsworth have been key figures in Republican Party politics and have shown no intention of dropping out; William Hyland has been Henry Kissinger's right-hand man dedicated to supporting the Secretary's penchant for secrecy. There is much to be done to revitalize our intelligence community to serve our security needs, but President Ford's action will not do it. Now, it is up to the Congress.



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CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

23 JAN 1976

Honorable Abraham Ribicoff, Chairman
Committee on Government Operations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to provide my views, pursuant to the Committee's requests, on three bills which would alter the existing pattern of congressional oversight of the Central Intelligence Agency. All three bills would establish a permanent joint committee which would, alternatively:

- (a) exercise legislative oversight of all Federal information and intelligence agencies (S. Con. Res. 4);
- (b) study the extent and methods of investigation or surveillance of individuals by any Federal instrumentality within the United States, and make recommendations on the organization of these agencies (S. 189); or
- (c) exercise legislative oversight of the Federal agencies comprising the intelligence community, the Secret Service, plus any surveillance or intelligence activities of any other Federal department or agency (S. 317).

Since the manner of exercising oversight of CIA is a matter for the Congress to determine, these comments are limited to those considerations which impact upon our foreign intelligence capabilities--chiefly the security of sensitive intelligence information.

Consistent with this concern, I believe oversight of CIA should be concentrated exclusively in the minimum number of committees required to effectively conduct it. At present, the Agency has four regular oversight committees: subcommittees of the Senate and House Armed Services and Appropriations Committees exercise traditional legislative and appropriations review. CIA reports fully on all its activities to these four committees. This



responsibility goes beyond merely responding to inquiries; it is the Agency's policy and practice to bring any matter of possible interest to the committees' attention. Also, pursuant to the Foreign Assistance Act of 1974, CIA's non-intelligence gathering activities are reported to the Senate Committee on Foreign Relations and House Committee on International Relations in addition to the regular oversight committees.

During the past year there has been an unprecedented trend toward the proliferation of oversight throughout the Congress. The creation of the select committees brought to eight the number of committees with a charter to be informed of CIA activities. Nevertheless, since then at least 11 other committees or subcommittees have demanded access to operational information. Congress could once boast that its record in protecting sensitive CIA information was exemplary. Until fairly recently, there had not been a major leak from Congress of CIA information. The reason is not difficult to discern: CIA operational information was tightly restricted to members of the oversight subcommittees. However, the past year has witnessed a shattering of Congress' formerly fine record of protecting sensitive national security information. The correlation should be apparent to all: the more widespread the dissemination of sensitive CIA information throughout the Congress, the greater the risk of disclosure. Expressly excluding other committees from access to CIA operational information should rectify the present situation regarding leaks, and would not impair good oversight.

Concentrated committee jurisdiction will work to the advantage of both the Congress and the Agency. Modern intelligence is a many-faceted process, but in the last analysis it is an integrated whole. It cannot be intelligently comprehended by investigating and dissecting its parts separately. Concentrated, rather than fragmented, oversight will enable Members to build up expertise on the intelligence agencies, an asset not easily acquired. Congress will have knowledgeable Members in these responsible positions, Members whose knowledge of past programs will enable them to make independent judgments on the probable effectiveness of intelligence community proposals.

This same expertise will also work to the advantage of the Agency, as we will gain the advice and counsel of knowledgeable Members and the resulting secure environment will facilitate the freer flow of sensitive information.

In addition, I urge the Committee to establish enforceable rules and sanctions to govern the handling of CIA information. These rules should have two aspects. First, CIA operational information should be limited to members of the oversight committees and designated staff. Second, any injunctions of secrecy attached to such sensitive information as a result of constitutional or statutory responsibilities must be fully respected and enforced.

I am not alone in calling for enforceable rules and procedures. In the 93rd Congress, the House Select Committee on Committees studied the problems of protecting information on intelligence operations. It found that the dangers of the real world are such as to require very close protection of certain sensitive intelligence information. It strongly recommended that the House take the initiative to create an orderly set of rules governing the receipt, use, storage, and dissemination of such information. Unfortunately, no action or recommendation has been forthcoming.

One specific proposal in S. 317 is deserving of special comment. Section (c)(2) of the bill provides that:

"No funds may be appropriated for the purpose of carrying out any intelligence or surveillance activity or operation by any office, or any department or agency of the Federal Government, unless such funds for such activity or operation have been specifically authorized by legislation enacted after the date of enactment of this Act."

One purpose of Section 8 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j) was to eliminate the requirement of an annual authorization, in the interest of protecting against public disclosure of the Central Intelligence Agency budget. Acceptance of Section (c)(2) of S. 317 would vitiate this principle. I am convinced that disclosure of intelligence budgets would provide potential adversaries with significant insight into the nature and scope of our national foreign intelligence effort, particularly where analysis of year-to-year fluctuations in the budget are possible. In addition, publication of any intelligence budget figure will lead immediately to public discussion of precisely which of our intelligence activities were covered by the figure and which were not. The ensuing discussion will lead to the disclosure of many sensitive and critically important intelligence programs and activities. The history of disclosure of Atomic Energy Commission budget materials and related information by both the Executive Branch and the Congress indicates that publication of any figure with respect to intelligence would quickly stimulate pressures for further disclosure and probes by various sectors into the nature of the figure and its component elements.

Both Houses of Congress recently endorsed, by greater than 60 percent margins, the continuing necessity of a secret intelligence budget. In June 1974 the Senate, by a vote of 55-33, defeated a move to disclose the intelligence community budget. In October 1975 the House defeated an amendment to the Fiscal 1976 Defense Appropriations Bill to disclose the CIA budget total. The House vote was 267-147. As you know, all of CIA's appropriation is contained in the Defense Appropriations Bill and the Agency's budget is subject to intensive scrutiny by the Appropriations and Armed Services Committees of both Houses. The committee review of the CIA budget inherent in an authorization requirement is now accomplished in a manner meeting Congress' expressed desire to protect intelligence budget figures from disclosure.

In summary, Mr. Chairman, the Central Intelligence Agency is prepared to work with Congress in any manner Congress chooses to organize itself to exercise its constitutional responsibilities. However, in order to assist this Agency's efforts to fulfill its statutory functions, oversight must be concentrated exclusively in the minimum number of committees necessary to effectively conduct it. Rules and enforceable sanctions limiting access to CIA operational information to members and designated staff of the oversight committees, and procedures for the continuing protection of such sensitive information are also required.

The Office of Management and Budget has advised there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

W. E. Colby
Director

AS DELIVERED

Statement

W. E. Colby

Director of Central Intelligence

Before

Committee on Government Operations

of the

United States Senate

January 23, 1976

AS DELIVERED

Mr. Chairman:

Thank you for this opportunity to discuss congressional oversight of our intelligence activities. Despite all the excitement in recent months over CIA and other intelligence activities, this is one of the most critical issues which must be faced in any serious investigation into our Government's intelligence activities.

Traditionally, intelligence is assumed to operate in total secrecy and outside the law. This is impossible under our Constitution and in our society. As a result, when CIA was established in 1947, a compromise was made under which broad, general statutes were drawn, and carefully limited arrangements for congressional review were developed. It was then believed necessary to sacrifice oversight in the interest of secrecy.

Our society has changed, however, and a greater degree of oversight is now considered necessary. U.S. intelligence has already moved out of the atmosphere of total secrecy which previously characterized it. We who are in intelligence are well aware of the need to retain public confidence and congressional support if we are to continue to make our contribution to the safety of our country.

Thus, from the earliest days of the current investigations, I have stressed my hope that they will develop better guidelines for our operations and stronger oversight, to ensure that our activities do remain within the Constitution and the laws of our country.

But I have not swung all the way to the other extreme of the pendulum-- to the position that there can be no secrecy. General Washington once said, "Upon secrecy, success depends in most enterprises of [intelligence]." We have many secrets in America which are necessary to the functioning of our democracy--the ballot box, the grand jury, and our attorney-client relationships. The secrecy of our sources of intelligence is equally important to the preservation of our democracy, and even of our nation in the turbulent world in which we live.

In 1947 we took a small step away from total secrecy by enacting general statutes and constructing careful oversight arrangements in the Congress. Proposals now under consideration would alter these arrangements to assure more detailed oversight. But it is essential that the pendulum not swing so far as to destroy the necessary secrecy of intelligence, or destroy intelligence itself in the process.

In former comments on this subject, I many times said that it was up to Congress to organize itself to exercise the necessary oversight of our intelligence activities. This is still true, but I believe that recent experience permits me to draw some conclusions on this topic which this Committee has graciously invited.

The matter has been extensively studied within the Administration during the past year, as President Ford shares many of the concerns of the Congress on this subject. The Rockefeller Commission, the Murphy Commission, our discussions with the Select Committees and other committees reflect this interest. A number of detailed studies were also made within the Executive

Branch, reaching the level of two extended meetings President Ford had with National Security Council members.

The views of the Administration are not yet formally fixed, so the comments I will make will be personal and based on my experience. My participation in the studies above, however, assures me that my views are in general compatible with the thrust of what President Ford will probably decide, although there may be some variation in the details.

Too great a stress on secrecy has led to situations in which members of Congress who were fully briefed on intelligence activities pleaded later that they had never heard of them when they came to public attention. One of the chairmen of our committees once indicated on the floor of the Senate that he had no inkling of one of our operations, although he had approved the specific appropriations necessary to continue it. His statement certainly kept the secrecy of his participation in our operation, but at the sacrifice of implying that our intelligence activities were operating without oversight and control. Indeed he added to public concern that we constituted some independent "invisible government."

On a number of occasions, especially since 1956, proposals have been made to establish a joint committee on intelligence, but the Congress has never seen fit to adopt them. During this past year jurisdictional problems have been highlighted in the Congress as a result of two things:

First, foreign intelligence today is not primarily limited to military intelligence, as it may have been in earlier years. It also is now of interest to those committees concerned with our economy, our foreign relations, our agriculture, space and a wide variety of other activities. As a result, we have had a proliferation of demands for congressional review of sensitive foreign

intelligence matters in these fields by other committees to the degree that 59 Senators and 149 Representatives have been briefed on some aspect of our activities this past year alone.

Second, during 1974, there was much congressional interest in our covert action activities, sparked by exposure of testimony I gave to one of our oversight committees on the subject. Both the House and the Senate, by 3 to 1 majorities, turned down proposals that CIA be barred from such activities. But in December 1974, a provision was added to the Foreign Assistance Act which required that any CIA activity abroad other than intelligence gathering could only be conducted if it were found by the President to be important to the national security and reported "in a timely fashion" to the appropriate committees of the Congress. Together with the two Select Committees, these "appropriate committees" now number eight.

I might quote, Mr. Chairman, from the conference report which led to the adoption of that new act, and it says that "The Committee of Conference agrees that strict measures should be taken to ensure maximum security of the information submitted to the Congress pursuant to this provision."

The Executive Branch is fully complying with that provision of the law. The President made the appropriate findings, and briefings were given to the committees according to whatever arrangements the committees made. It was stressed and understood on all sides that these matters were sensitive, secret operations whose exposure would cause political damage to our foreign policy as well as frustration to the operations concerned. The result of the year's experience, in my mind, is clear. The system won't work. Every one of the new projects that were subjected to this process has leaked into

the public domain. I am prepared to argue the value of each of these projects, but that is not my current point. The fact is that a secret operation conducted precisely according to the procedure set up by the Congress cannot be kept secret. I believe it essential to repeal that procedure and replace it by another which will include provisions for adequate secrecy.

In this Bicentennial year, it is appropriate to note an earlier American experience with this problem. On November 9, 1775, the Continental Congress adopted a "resolution of secrecy" under which any member who disclosed a matter which the majority had determined should be kept secret was to be expelled "and deemed an enemy to the liberties of America." On November 29, 1775, the Congress established the Committee on Secret Correspondence and gave it foreign intelligence responsibilities, managing a network of secret agents in Europe. This Committee took steps to protect the secrecy of its intelligence activities by sharply restricting access to operational matters. On one occasion, the Committee justified the secrecy of its information as follows:

"Considering the nature and importance of it, we agree ... that it is our indispensable duty to keep it secret, even from Congress ... We find, by fatal experience, that Congress consists of too many members to keep secrets."

Mr. Chairman, at that time there were 56 representatives in the Congress, compared to the 208 that I reported briefing during 1975.

If the Congress should decide to adopt new oversight arrangements, I believe it should establish a representative group to oversee intelligence activities on Congress' behalf. This representative group could be a joint committee or other arrangement. In any event a representative group should consist of a restricted number of members so that we do not involve the large numbers of Congressmen currently briefed on our sensitive activities.

The representative character of such an oversight body must be respected by us in the Intelligence Community, so that we can make available the information it needs to do its job.

At the same time, arrangements can and should be developed between such a representative body and the Intelligence Community by which reasonable limits are established as to the matters made available even to it. In my present post as Director of Central Intelligence, I do not insist, for example, upon knowing the name of a foreign agent in some dangerous situation. It is not necessary to my duties that I know his specific identity. It is essential that we be able to assure our foreign agents abroad, a number of whom have already expressed their alarm and limited what they tell us, that their names will be totally protected, since their lives or livelihoods are at peril. I would expect that a responsible representative committee of Congress would similarly not request such specific identification, as our current oversight and Select Committees have not requested such sensitive information. Understandings of this nature between a responsible oversight body and the Intelligence Community would be more productive than adversary debates over either branch's "right" to have or to withhold such information.

A responsible oversight body must not discourage the Intelligence Community from conducting its own investigations and correcting its activities. A great portion of this past year's investigations has consisted only of public repetition of the private reviews by the Intelligence Community of its own activities. Since the full story of American intelligence remains secret, the impression is left with our public that what was revealed is characteristic

of the whole. The experience has done little to encourage objective and hard-hitting self-examination in the future. CIA's collation of a list of some questionable activities in the domestic field was used as the basis for sensational charges of a massive illegal domestic intelligence operation. In truth, our misdeeds were few and far between, as the final Rockefeller Commission report reveals. CIA's investigations into possible assassination activity, which led to specific directives in 1972 and 1973 against such activity, have been the basis for sweeping allegations that assassinations are part of our function. We never assassinated anyone, as the Senate report on intelligence reveals. And our own post-mortems of our performance in various intelligence situations have been selectively exposed to give a totally erroneous impression of continued failures of American intelligence. In fact, we have the best intelligence in the world. But we cannot keep it that way if every one of its corrective efforts is trumpeted to its enemies.

In the consideration of any or altered oversight arrangements, the Congress should, I believe, deal with the problem of proliferation of congressional review of intelligence activities. I strongly urge that oversight be concentrated exclusively in the minimum number of committees necessary to effectively conduct it, which to me means one. Otherwise we are in danger of reverting to the situation of reporting to a myriad of committees and exposing parts of our activities in all directions. It should be possible to concentrate congressional oversight, perhaps arranging that the oversight committee have representation from the other standing committees with interest in this subject.

The issue of giving prior notice to Congress of sensitive intelligence operations has been raised, Mr. Chairman. I believe this is a thoroughly false issue. The present statute calls for the appropriate committees to be informed "in a timely fashion" with respect to activities abroad other than intelligence gathering. Our regular oversight committees are kept currently informed of major developments, and each year they review our appropriation requests in great detail.

A requirement of prior notice before any intelligence activity could be undertaken would, in my view, conflict with the President's constitutional rights, would be totally impractical during times of congressional recess when crises can arise, and would add nothing to the ability of the Congress to express its views about any of our activities. We currently inform the Congress on any decision immediately, although the actual hearing may be delayed by the committee in question for several weeks. Almost none of our activities are single-step operations which take place on only one occasion. An intelligence or covert action operation is generally a continuing effort running over some time. Informed of such an activity, a committee has every ability to express the concern of its individual members, to vote in committee its opinion with respect to the activity, to appeal to the congressional leadership, and even to seek an appointment with the President himself. The committee also retains the ultimate legislative or appropriation sanction, if its views are not given due weight.

The unilateral exposure of an operation to public notice is not the solution. In essence, the theory adopted by some is that the right to expose such operations constitutes a super-constitutional individual veto of any

secret activity. We cannot run such secret operations, Mr. Chairman, if Congressmen confirm to inquiring newsmen operating on a lead that indeed they were given a secret briefing on a covert operation in a certain country, instead of refusing to comment. Neither can we run secret operations if individual Congressmen announce that there are three other operations which have not yet been disclosed, thereby stimulating every investigative reporter in Washington to determine the specifics thereof by some hypothetical questions. And we cannot conduct covert operations if a committee puts out a report which refers to an activity which leaves out the name of the country or individual concerned, but gives enough evidence for any amateur sleuth to identify it beyond a shadow of a doubt in time for its identification to be carried with the news story of the report.

An essential element of new congressional oversight arrangements is better procedures for protecting sensitive information. Senate Rule 36 (3) and (5) states that confidential communications from the President or head of any department are to be kept secret unless the Senate votes. But the Senate, on November 20th last year, failed to vote on the release by the Select Committee of information which the President specifically requested be kept secret and in the face of my request that certain names of CIA personnel therein be deleted. In the House of Representatives, Rule XI.2. (e)(2) provides that the records of any committee are open to any member, which on at least one occasion has led to the exposure of certain CIA operations despite the written promise of a Member to keep them secret.

The arrangements for Congress to receive and protect sensitive information are most imperfect. A prior security clearance of staff members and termination of employment for disclosure are hardly adequate sanctions to ensure the protection of sensitive intelligence sources which can produce substantial royalties for its disclosure. The extensive briefings and indoctrination and the secrecy agreements employed in the Executive Branch have even proved inadequate in the state of our present legislation. With respect to staff members, therefore, I believe it essential that a regular procedure of security protection be established. This must be enforceable not only by indoctrination and discipline but also by sanctions. These are contained in legislation which I have proposed and which is about to be recommended in the Executive Branch to cover those who voluntarily undertake the obligation of secrecy as an aspect of their employment. This proposal would apply equally to Executive branch employees and congressional staff members who obtain privileged access to our intelligence secrets. With respect to Members of Congress themselves, we must, of course, look to the self-discipline of the two Houses with respect to their membership.

Mr. Chairman, we also need a procedure to determine the declassification and public release of those secrets that no longer need to be protected. This cannot be left to the individual staff member in the Executive or the Legislative Branch. Under the Constitution, it cannot be assumed by the Legislative Branch alone and any such contention would inevitably restrict the flow of sensitive information from the Executive. This could consist of an agreement that if the committee decides on release, the President has reasonable opportunity to certify that the release would be detrimental to the national security, and

his determination then would govern in the absence of further resolution of the constitutional questions involved. And this must apply to any release of the information, so as not to lead to an absurd situation in which a committee agrees not to release individual reports of secret activities but then proposes to publish them in its final report.

In conclusion, Mr. Chairman, I believe that congressional oversight of our intelligence activities can be strengthened. The degree of oversight can be increased relative to that in the years in which there was a general consensus that these matters were better not known by outsiders. The structure can be improved by focusing responsibility so that a depth of knowledge and expertise about our intelligence operations can be developed. The structure can also be improved by clear assignment of responsibility for exclusive supervision of our intelligence activities to a limited number of members of the Congress, representing the Congress as a whole, who would have full access to all information appropriate to exercise their responsibilities. And congressional oversight can be improved by making arrangements with Congress to protect the sensitive intelligence activities of our Government in the same way as we protect other secrets essential to the survival of American democracy. Executive Branch supervision can also be improved by ensuring the discipline of those in the intelligence profession and of their supervisors as to their respect for these important national secrets, and by giving us the ability to enforce such protection against those who would wantonly destroy them. These improvements, Mr. Chairman, in supervision of our intelligence activities would have truly more long-lasting value as a result of this year of investigation

than any other single action taken by the Congress. They would be a fitting conclusion to this year of investigation of intelligence--so that our intelligence service will be responsible to our Constitution, its legislative oversight will be equally responsible, and we will continue to have the best intelligence in the world.

It will give, Mr. Chairman, a new meaning to the initials CIA, Constitutional Intelligence for America, with equal stress on the needs of all three: the Constitution, intelligence, and especially America.



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Department of Justice

TESTIMONY

OF

THE HONORABLE EDWARD H. LEVI
ATTORNEY GENERAL OF THE UNITED STATES

BEFORE

THE SENATE GOVERNMENT OPERATIONS COMMITTEE

9:30 A.M.
UNITED STATES SENATE
FRIDAY, FEBRUARY 6, 1976
WASHINGTON, D.C.



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Mr. Chairman and Members of the Committee:

I appreciate your invitation to discuss with you today congressional oversight of intelligence operations. We all recognize the seriousness of the subject. Substantive foreign policy determinations and establishment of defenses adequate for our nation's security are among the most essential demands upon our government. Errors in such decisions carry the potential for immediate and severe consequences both for ourselves and for our friends abroad. The wisdom of these decisions cannot be guaranteed; we can rely only upon the informed judgment of those charged with making and those charged with carrying out our policy. How our intelligence apparatus is constructed, then, is literally a vital question. In addition, it must be of particular concern that any system of surveillance be conducted with a scrupulous regard for citizens' rights of speech and privacy. The Congress and the President share the responsibility of assuring that the intelligence system employed by this government at once provides the information necessary to both policy formation and implementation and protects the constitutional rights of the citizenry.

Among the subjects which I would like to discuss with the Committee are these: First, what are the constitutional and institutional constraints on Congress' role in this area;

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second, how, in providing for performance of Congress' legitimate role, can the confidentiality of information essential to intelligence operations best be maintained. As to this latter point, one may distinguish between the authority of the Congress to obtain information for a particular committee or committees, or for the Congress more generally; the authority of the Committee or Congress to publish such information; the state of the law as to the power of members of Congress or their staffs under the speech and debate clause to divulge such information, and the persistent problem, whenever there are matters of high secrecy, of completely unauthorized, intended or unintended, disclosures. I would like then to proceed to the topic which concerns the role of the Federal Bureau of Investigation as essentially a law enforcement agency, and the difficulties which have to be faced if one seeks to view its intelligence functions as separate for oversight purposes.

While responsibility is shared for ultimate success in constructing viable intelligence procedures and formulating intelligence policy, the mode of discharge of this responsibility by the Executive and Legislative Branches must differ. Congress may by statute set policy in those areas granted for its consideration by the Constitution and may determine acceptable procedures for officers and agents of the federal

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government. It may gather information necessary to this function. Daily implementation of policy and interstitial policy formation, particularly in foreign affairs, is an Executive function. This Separation of Powers is, of course, basic to our government. As stated by the Supreme Court one week ago in Buckley v. Valeo, Slip. op. at 113-114:

. . . all litigants and all of the courts which have addressed themselves to the matter start on common ground in the recognition of the intent of the Framers' that the powers of the three great branches of the National Government be largely separate from one another.

The limits upon the powers of the respective Branches are distinctions of degree. Each branch has at times crossed into the area of another, and I suggest the Framers assumed a certain flexibility in this regard. But recognition of the constraints of the principle is required of all branches, as Jefferson pointed out in his Notes on the State of Virginia. The line must be drawn. The Supreme Court drew that line in Buckley, supra, but more often the line must be drawn by forces of institutional self-restraint. The importance of oversight is not challenged by saying that a line must be drawn there also. There is a question of how far a committee can go in monitoring intelligence operations for legitimate legislative purposes before the tendency develops to attempt to manage them. The oversight bill submitted by the Chairman of the Senate Select Committee last Thursday, S. 2893, would

create an intelligence committee "to assure that such activities are in conformity with the Constitution and laws of the United States." The bill further requires that the committee be kept "fully and currently informed with respect to intelligence activities," and that no significant covert or clandestine operation (other than activities solely for the collection of intelligence) go forward "unless and until the Committee . . . has been fully informed of the proposed activity." Members of Congress as well as the President have a duty to our Constitution, but it is the President's responsibility under Art. II, Section 3 of the Constitution to "take care that the laws be faithfully executed." I do not question for a moment the need of such a committee for information sufficient for its legitimate purposes. But the line between that information which is needed for these purposes and the information needed to assume managerial duties is, in my view, the determinant of what information can properly be required. Thus Senator Fulbright, in commenting on a proposed amendment to the Mutual Security Act of 1957 containing a "fully and currently informed"

reporting requirement, stated:

Under our system of Government the very fact that we have a legislative and executive branch necessitates that one branch must, occasionally, accord to the other branch a certain degree of trust. If the amendment of the Senator from Wyoming means anything, it means that he is not satisfied with the way the executive branch is administering the law, and he wants the legislative branch to take over that function by requiring full and current reports, why does the Senator want that if it is not to assume the responsibility which is in the Executive? If we are to be fully informed, then I suppose we should take the responsibility of administering the law day by day. It is a wholly unworkable approach to this problem. 103 Cong. Rec. 9150

The amendment was defeated. The point is delicate but fundamental.

Whatever mechanisms are devised for Congressional intelligence oversight, they must leave to the Executive such discretion as the Constitution places in his Office and the ability to act within his sphere without unwarranted and debilitating restraints. Some procedures which might work in other areas will be inappropriate in a field as volatile and sensitive as foreign intelligence. The impediments commonly associated with intermediate bureaucracies would here serve neither the Congress nor the nation. "Energy in the Executive," wrote Hamilton in Federalist No. 70, "is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws." The Executive must retain the freedom to respond to what Jefferson in the context of the

Louisiana Purchase called the "fugitive occurrence" demanding prompt and decisive action. The President too is the representative of the people, and his Office was designed to afford a capacity for action and decision.

A specific aspect of Separation of Powers raised by oversight of agencies charged with gathering foreign intelligence and of the Federal Bureau of Investigation's criminal investigatory functions is the existence of privileged information within the Executive Branch. The doctrine of "Executive privilege" has come through a stormy season, yet in the eye of that storm, the Supreme Court affirmed the constitutional basis of the privilege and, when properly utilized, its essential public purpose. In United States v. Nixon, 418 U.S. 683 (1974), the Court stated:

The privilege is fundamental to the operation of government and inextricably rooted in the separation of powers under the Constitution.

* * *

Nowhere in the Constitution . . . is there any explicit reference to a privilege of confidentiality, yet to the extent this interest relates to the effective discharge of a President's powers, it is constitutionally based.

The Court, while requiring production of material over a claim of privilege by the Executive in that case, was careful to emphasize that the information sought was not claimed to involve military, diplomatic, or sensitive national security secrets.

The Supreme Court quoted from the 1948 opinion of Justice Jackson in C & S Air Lines v. Waterman Corp., 333 U.S. 103, 111, "The President, both as Commander-in-Chief and as the Nation's organ for foreign affairs, has available intelligence services whose reports are not and ought not to be published to the world", and from Chief Justice Vinson's opinion in 1953 in United States v. Reynolds, 345 U.S. 1, where the Court said:

It may be possible to satisfy the court, from all the circumstances of the case, that there is a reasonable danger that compulsion of the evidence will expose military matters which, in the interest of national security, should not be divulged. When this is the case, the occasion for the privilege is appropriate, and the court should not jeopardize the security which the privilege is meant to protect by insisting upon an examination of the evidence, even by the judge alone in chambers.

Admittedly, the Court in United States v. Nixon, as it pointed out in a footnote, was not concerned "with the balance between the President's generalized interest in confidentiality and the need for relevant evidence in civil litigation, nor with that between the confidentiality interest and congressional demands for information, nor with the President's interest in preserving secrets." There may be disagreement as to whether the Congressional claim for information is stronger or less strong than that of the judiciary in criminal proceedings or of a grand jury. The District of Columbia Circuit's decision in Senate Select Committee v. Nixon suggests that the answer depends on particular circumstances. As you recall, in that case--the only case concerning a claim of executive privilege as against a congressional committee

subpoena--the Court held that the committee's need for the information was not sufficient to overcome the general need for executive confidentiality, even though the same court had earlier held, in Nixon v. Sirica, that the grand jury's need for the same information was sufficient to defeat the generalized claim of privilege.

The Senate Select Committee decision, however, rests clearly on the point that the privilege applies to congressional, as well as judicial, subpoenas. As the Supreme Court stated in United States v. Nixon, the claim of privilege "can be said to derive from the supremacy of each branch within its own assigned areas of constitutional duties," and pointed out that the fact that there is no provision in the Constitution for a presidential privilege as to the President's communications corresponding to the privilege of Members of Congress was not dispositive of the issue as to whether there was such a privilege.

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There is one area of confidentiality which I wish to emphasize as of special importance in the context of oversight of the Federal Bureau of Investigation. I refer here to the privilege with respect to investigatory files. Attorney General Jackson stated cogently and succinctly the justification for withholding certain material in such files even from the Congress in an official opinion letter to Chairman Vinson of the House Committee on Naval Affairs.

[D]isclosure of the reports would be of serious prejudice to the future usefulness of the Federal Bureau of Investigation . . . [M]uch of this information is given in confidence and can only be obtained upon pledge not to disclose its sources. A disclosure of the sources would embarrass informants -- sometimes in their employment, sometimes in their social relations, and in extreme cases might even endanger their lives. We regard the keeping of faith with confidential informants as an indispensable condition of future efficiency. 40 A.G. Op. 45, 46-47.

The then Attorney General went on to observe, "Disclosure of information contained in the reports might also be the grossest kind of injustice to innocent individuals. Investigative reports include leads and suspicions, and sometimes even the statements of malicious or misinformed people."

The necessity of at times withholding investigatory files from Congress has been analyzed by Professor Cox as follows:

A judicial proceeding is usually adversary. The plaintiff and defendant may be expected to call for observance of rather strict rules of evidence which would exclude most of the contents of such files as hearsay or otherwise incompetent long before reaching any question of privilege. In legislative hearings the committees quite properly refuse to confine themselves to evidence competent in a court. There are no parties. The Executive must therefore take it upon itself to protect individuals against disclosure of untested allegations and reports. It is all too clear that fairness requires some protection for the individual; it is also beyond argument that the interests of efficient administration are thereby served. Men and women will be less willing to take positions in the government if they know that they thereby open themselves to publication of rumors and false allegations. Informants will be less likely to come forward with information. The government may shrink from conducting a thorough investigation knowing the risk of abuse of what it gathers. Few individuals whose files were publicized in congressional hearings conducted by a publicity-seeking Senator or Representative would think themselves protected by the rights to cross-examine and offer opposing testimony. For such reasons few of the present critics of executive privilege found fault with Presidents Roosevelt, Truman and Eisenhower for withholding intelligence or loyalty and security files. Cox, Executive Privilege, 122 U.Pa.L.Rev. 1383, 1426-27 (1974).

Wide ranging demands by an oversight committee for personal investigatory matter, and certainly the public disclosure of such material, would vitiate the purposes of the Privacy Act and of the Freedom of Information Act's exemption. The purpose of the Privacy Act, expressed in section 2(b), was to provide "safeguards for an individual against the invasion of personal privacy." This was accomplished, among other means, by establishing the strict limitations contained in 5 U.S.C. §552a(b) on the permissible dissemination, disclosure, and use of information about individuals without their prior consent. The same policy is embodied in Exemption 7 to the Freedom of Information Act's compulsory disclosure requirement--5 U.S.C. §552(b)(7). That section, as amended in 1974, exempts investigatory records compiled for law enforcement purposes from disclosure when disclosure would "constitute an unwarranted invasion of personal privacy." At the same time, Exemption 7 recognizes that disclosure of investigatory files may seriously endanger law enforcement interests. Accordingly, investigatory files are exempt from compulsory disclosure when disclosure would, among other things, reveal the identity of a confidential source or confidential information furnished by a confidential source, "disclose investigative techniques and procedures," or "endanger the life or physical safety of law enforcement personnel."

Both the Privacy Act and the Freedom of Information Act provide specifically that their intent was not to prevent dissemination of information to the Congress. (5 U.S.C. 552(a)

(b)(9)-Privacy Act). In the past broad demands for this kind of information by committees have been infrequent. But if there were broad demands in the future, the protection announced by these Acts would become illusory. Moreover, protection would not be just dependent upon safekeeping of the material by the committees. I fear that routine release of personal information from criminal investigatory files would create the potential for and, inevitably, the suspicion and the fear of misuse of that information.

Executive privilege, constitutionally grounded as it is as an incident of Executive power, and recognized by the courts as such, is not in my view subject to legislative annulment. Should that privilege be invoked in circumstances deemed inappropriate by the proposed committee, the possibility of litigation of the question exists. I would note, however, that it is by no means clear that a court will accept jurisdiction over such an issue or that a court would or could produce any firm or (from the perspective of the Congress) even desirable guidelines. See Senate Select Committee on Presidential Campaign Activities v. Nixon, 498 F.2d 725, 732 (D.C. Cir. 1974).

I would anticipate that invocation of an absolute privilege against disclosure of information to a congressional intelligence oversight committee would be a rare occurrence. With regard to the recently completed investigations, the President has turned over to the Congress an extraordinary amount of highly sensitive information in order that the committees might carry out their mission. Successful democracies achieve an

accommodation of competing values.

I believe the point is well made in a recent lecture by Judge Henry Friendly of the United States Court of Appeals for the Second Circuit. Judge Friendly, one of our country's most distinguished jurists, wrote as follows: "It is no accident that we should recently have been witnessing a series of near confrontations over the desires of congressional committees to burrow ever more deeply into the files of the Executive Branch. I have not made the study needed to arrive at a judgment just where the lines should be drawn, and it would be improper for me to express an opinion if I had one. But it cannot be wrong to suggest that both sides did well to work out accommodations; that the courts should not be called upon too often to umpire contests between the other branches; that while the Executive should not force Congress into protracted judicial proceedings in order to obtain urgently needed information, Congress may be wise sometimes to settle for less than its maximum demands, since, on the one hand, not everything in Presidential and departmental files is truly confidential and, on the other, Congress does not really require, or at any rate need to divulge, every last nugget of sensitive information in order to legislate intelligently or to discharge its duties as the grand inquest of the nation. Although neither Congress nor the Executive should sacrifice fundamentals, the spirit of the framers calls for what the Supreme Court has termed a "formula of compromise." Just as

Presidents should recall the wisdom of Washington in giving the House of Representatives everything it wished about the failure of the St. Clair Expedition, so legislators should reflect on what Senator Fessenden said in defending the legality of a Senate inquiry into John Brown's raid:

I am ready to use judiciously, calmly, moderately, all the power which I believe is necessary and inherent, in order to do that which I am appointed to do"

Judge Friendly adds with respect to the last quotation: "The adverbs are as important as the assertion."

I have raised the subject of executive privilege for one important reason: to urge that any system which you establish leave room for accommodation of the Presidential obligation to maintain secrecy and the congressional need for information, through various arrangements which the two branches have in the past devised, and which have been generally satisfactory. I think it would be a mistake for the Congress to disable a committee from agreeing to accept certain information with the understanding that it shall not be further disclosed or from adopting some other means of accommodation. Such a restriction would eliminate one of the principal buffers that have cushioned what might otherwise have been repeatedly harmful collisions between the two branches in the past.

In suggesting such arrangements, however, I must emphasize that assurance of tight and enforceable procedures to maintain the confidentiality of the sensitive information with which the proposed committee will be largely concerned will be a prerequisite to a conscientious decision to disclose by the Executive. The dangers of disclosures of the nature anticipated and their potential impact upon the efficacy of our intelligence apparatus was advanced by Jay in Federalist No. 64 where he wrote that those who would supply useful intelligence "would rely on the secrecy of the President" but would not confide "in that of the Senate and still less in that of a large popular Assembly." Jay's premise bears articulation

in the current climate -- not all secrets are intended merely to save an Administration embarrassment.

Secrecy, despite the unpopular reputation it now has, is a responsibility of the governors of any State in the conduct of certain affairs. Intelligence operations are the prime example of such affairs, and for that reason the task of the members of the proposed oversight committee will be, as the decisions involving foreign intelligence have always been for the President, extremely difficult and taxing. The committee will have to accept the responsibility of legislatively responding to specific information without the benefit of the vigorous public debate from which the policy of a free government ordinarily draws its vitality. Decisions in this area cannot be made by referendum. Intelligence oversight is a quintessential case in which, in Edmund Burke's phrase, the people must rely upon the judgment of their representatives as well as their industry. Unless we are to depart from the judgment of statesmen from the beginning of time and forgo intelligence gathering altogether, we must accept some of the burdens of its endemic secrecy.

Since secrecy is essential, I would like to address the mechanisms for its assurance which might be established. Adequate procedures for confidentiality would, in my view, form the cornerstone of a cooperative relationship between the proposed committee and the Executive. I stress cooperation. The branches of government were not designed to be at war with one another. The relationship was not to be an adversary one,

though to think of it that way has become fashionable. Inevitably in a system of divided powers there are points where responsibility conflicts, where legitimate interests and demands appear on either side. The essence of compromise is that there be no surrender of principle or power on either side, but a respect for the responsibility of others and recognition of the need for flexibility and reconciliation of competing interests. Institutional self-restraint does not mean that we must have a government of hesitancy. It does mean that the duty to act is coupled with a duty to act with care and comity.

Creation of viable procedures by which classified information will be protected from public disclosure has to be seen against the background that Congressmen and their staffs have immunity from judicial process with respect to their legislative acts--acts that include, under the Supreme Court's decision in Gravel v. United States, 408 U.S. 606 (1972), the public disclosure of classified material in the course of congressional debates and hearings. The immunity from external sanction, absent any viable system of protection enforced by the Congress itself, inevitably reinforces the possibility that dangerous disclosures, however motivated, will occur.

Whether any or all of this information should be classified is not the issue. Rather the issue is whether any one Representative, Senator, or staff member, or even a majority of any committee should have the unbridled power to make that decision. Today, once information is disclosed to them, they do have that power whether under their immunity or through "leaks," with the result that when any one Congressman, Senator, or staff member personally believes that the information should be made public, it can be made public.

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This is true, although the result may be to halt, obstruct, or otherwise interfere with the lawful operations of the Government. So long as this power exists and is exercised, one may expect serious reservations on the part of the Executive to the furnishing of classified information to an oversight committee.

What can be done? S.2893 takes a step in the right direction by creating a procedure by which disclosure may be authorized, and prohibiting disclosure except as authorized. The procedure, however, provides that the final decision is to be made either by the Senate in closed session or by the Committee itself. As to release by the Committee itself, I wonder if it is the best resolution to permit five members of any committee to have such a power. As to release by the full Senate, with all due respect, one has to emphasize the difficulties that must be met if such a procedure is properly to safeguard classified information. Simply put, the danger of public disclosure depends, in part, on the number of persons who have access to information. Moreover, assuming that the House had a similar procedure for a similar oversight committee, or if the committee were joint, one can easily imagine one house voting to publish and the other not.

There are other alternatives. Section 112(b) of Title I of the United States Code, for example, (the so-called Case Amendment) provides that the Administration shall transmit to the Congress international agreements, but the President may

require that an agreement be held in confidence until he determines that secrecy is no longer essential. The Congress retains, of course, the ability to bring its not inconsiderable political power to bear in favor of lifting the injunction to secrecy.

A precedent with less assurance of success, but perhaps workable, would be the procedure agreed upon between the President and the House Select Committee under which the Committee could not release information given it if the President certified in writing that public disclosure would jeopardize national security. The Committee retained the option, however, of seeking judicial resolution should a dispute over release arise.

Whatever system is devised for determining whether disclosure should be made, there must be some means to ensure that the system is not circumvented by disclosures that have not been approved. Could there not be a clear statement by the Congress that members or staff responsible for leaks will be subject to penalty? The bills which I have examined contain no adequate sanction provision, if such a provision is desired.

There are, I know, severe practical obstacles to congressional enforcement of rules against disclosure. Perhaps the only appropriate comment for me to make is that I believe this is a most important and difficult problem which has to be looked at directly, I trust, by this Committee.

In short, as you review various proposals for oversight committees, I would urge that it is in the interest of our country, and in the mutual interest of both the Congress and the Executive to create procedures, sanctions, and controls which adequately assure that classified information provided the committee will be maintained safe from disclosure. Congressional involvement in decisions relating to intelligence activity should not, and I trust, will not mean that there will be no confidentiality to intelligence practices or that there will be a permanent on-going revelation of all practices for the purpose of public debate. There is a burden, as I have said, to the necessity for some secrecy. Without assurance on that point, the committee will never be able to play the role which has been envisioned for it.

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Finally, I wish to raise with the Committee the problems which I believe will be present when Congressional oversight of intelligence activities is chartered so broadly as to include oversight of important segments of the Federal Bureau of Investigation which are essentially of a law enforcement character, and which should be closely related and tied to law enforcement. This includes domestic security as well as counterintelligence responsibilities of the Bureau.

Unlike agencies such as the CIA, whose mission is the collection and evaluation of intelligence, the FBI is essentially a law enforcement agency. Its principal responsibility is the detection and investigation of violations of the Federal criminal laws. This is the direction which must be emphasized. It is the direction Attorney General Harlan Fiske Stone emphasized when he stated:

The Bureau of Investigation is not concerned with political or other opinions of individuals. It is concerned only with their conduct and then only when such conduct is forbidden by the laws of the United States. When a police system passes beyond these limits, it is dangerous to the proper administration of justice and to human liberty, which it should be our first concern to cherish.

As I indicated in my statement before the Senate Select Committee on Intelligence Activities last December, it does not follow from Stone's sound warning, for example, that domestic security investigations conducted by the Bureau are outside the Bureau's proper functions. It does follow that those investigations should be conducted only to ascertain information on activities which involve or will involve the violation of federal law. The detection of crime in many areas (and not only the domestic security area) requires preparation and at least some knowledge of what activities are taking place. This is true, for example, in organized crime investigations, as well as in domestic security investigations. While these responsibilities of the Bureau may be characterized as intelligence activities, they are, as they should be, directed toward its criminal law enforcement function.

The point I have made about domestic intelligence investigations applies as well to FBI counterintelligence activities, which have a similar law enforcement nexus derived from the antiespionage statutes. While the results of these activities may on occasion manifest themselves in forms other than criminal prosecution, the connection with law enforcement is inseparable.

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In the foreign intelligence area, the work of the Bureau is almost invariably related to counterintelligence, and thus to law enforcement. It is true that some foreign intelligence activities by the Bureau are conducted, subject to the approval of the Attorney General, at the request of other intelligence agencies. As to these responsibilities, which comprise only a small part of the FBI's investigative activities, the oversight of the intelligence agencies requesting the cooperation of the Bureau, necessarily will entail review of the judgments and policies reflected in such agencies' requests for the assistance of the Bureau. Separate oversight jurisdiction would not seem to be necessary.

In drawing your attention to this basic difference between the primary investigatory activities of the Bureau and other agencies' intelligence activities, I do not mean to suggest that there are no similarities; certainly some of the methods and techniques utilized are similar. Nor do I mean to suggest that there are no differences between the Bureau's activities in the domestic security or counterintelligence areas and its activities in the more traditional criminal law areas; in the former the importance of timely information and the value of a predictive capability is often greater than in the latter. Rather, my point is that these activities are an integral part of the basic

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law enforcement function of the Bureau and that there is a problem if, for purposes of oversight, they are separated out and included within oversight of intelligence activities not law enforcement related. Put in another way, I think it is important that these activities be viewed both within and outside the Bureau in a law enforcement setting, and this is one reason why any system of oversight should deal with the Bureau as a unit. There is a further reason for oversight to be directed to the Bureau as a whole. The various investigatory functions of the Bureau are inseparably related. As a result, oversight which is directed at, for example, intelligence activities to the exclusion of law enforcement functions would have a disturbing potential for generating conflicting congressional guidance.

Our experience in developing guidelines governing the activities of the Bureau may be illustrative. The Department of Justice has been engaged for many months in the drafting of these guidelines. They are taking a long time to develop, I am sorry to say, but I know they will be useful not only as guidelines but as the basis for statutory changes, executive orders and rules. This task has impressed upon us the inter-

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relationship of these activities and of the policies that should control them. The very exercise of the guidelines and much of their value, is to see the Bureau's activities, when the guidelines are completed, as interrelated and imposing similar standards unless departures in standards are clearly justified. The effectiveness of congressional review of the guidelines will be maximized if they are seen as a whole rather than carved into segments for consideration by various committees, each with its special concerns and interests.

It should be clear that my objections to including these activities of the FBI in comprehensive intelligence oversight are not objections to the congressional review of these aspects of the Bureau's operation or the Department's supervision of it. I welcome and encourage such review whether the oversight is conducted by the committee designated with that general responsibility or by a committee reviewing intelligence policies of which the activities of the Bureau are an incidental part.

I have attempted to describe what I believe are some of the critical considerations that must enter the design of a system of oversight in this sensitive area, a system that will ensure that Congress can fulfill its constitutional responsibilities and respond to the vital interests of the public in protecting the security of the nation and, at the same time, protecting our citizens' rights. I know that, in describing the problems, I have not gone far in suggesting any very firm answers. In part that is because I am not sure I know what the best answers are. But in part, too, it is because you are better judges than I of the kinds of Congressional arrangements that are best suited to addressing the problems and concerns I have described. I would add only that oversight carries with it, as I am confident you know, a heavy responsibility-- a responsibility that is properly yours under our Constitution, a responsibility that can be exercised, and must be, "judiciously, calmly, moderately." As Judge Friendly said, "The adverbs are as important as the assertion."

Hearings before the Senate Committee on Government Operations

Opening Statements - Wednesday, 21 January 1976

I. Senator Ribicoff - page 1

1. Improve policies of future, do not dwell on past mistakes
2. Country needs strong intelligence program
3. New committee will restore trust in the intelligence agencies
4. Senate deadline of 1 March to act on proposals for Senate oversight of intelligence activities
5. Day-to-day oversight from ~~Congress~~ ^{EXECUTIVE BRANCH}, oversight for covert activities from Congress
6. Legislation should protect confidential information
7. Six specific questions to be considered during hearings:
 - a. Joint committee of Congress or permanent committee of Senate?
 - b. Type of jurisdiction?
 - c. Jurisdiction over domestic intelligence activities?
 - d. To what extent should Executive branch keep new committee informed?
 - e. Notice on CA?
 - f. Types of standards and safeguards to govern disclosure of sensitive information to others?

II. Senator Percy - page 3

1. Outstanding intelligence service is indispensable.
2. CIA saving of \$60 billion on ABM expenditure was helpful
3. Is intelligence community organized most efficiently?
4. Are responsibilities of intelligence components clear?
5. What should the role of Congress be in giving guidance to the intelligence community?

III. Senator Allen - page 5

1. Accountability and possible stifling of the activities of intelligence agencies
2. Overriding requisite of intelligence is secrecy
3. Imperative issue in hearings is stopping leaks
4. Favors rejecting proposal of annual authorization requirement to protect classified information

IV. Senator Brock - page 8

1. What are long-term goals of Congress with regard to oversight?
2. Congress must accept responsibility that goes with knowledge.

V. Senator Nunn - page 9

1. Legislative and Executive branches must work together in the field of foreign policy

VI. Senator Weicker - page 10

1. Must clean up act of intelligence and law enforcement agencies quickly

VII. Senator Glenn - page 11

1. Survival of nation depends on the intelligence agencies
2. Must strike a balance between necessity and the prevention of excesses.

Senator Mike Mansfield (D., Mont.)

Wednesday, January 21, 1976

1. Excesses of intelligence agencies are a direct result of congressional neglect.
2. Urges the committee to recommend a mechanism which will provide "regular, comprehensive, and systematic" oversight.
3. Believes a new committee should:
 - a. be a separate Senate committee (Senate's role in foreign affairs is different from House's role);
 - b. have jurisdiction over all foreign intelligence agencies, including part of FBI;
 - c. have annual authorization authority;
 - d. be kept informed on a continuing basis of all major activities and plans;
 - e. have rotating membership (six to eight years limitation on service).
4. Mansfield would select members for an intelligence committee reflecting a broad spectrum of political viewpoints, geography, age, and seniority.
5. Regarding exclusivity of jurisdiction, the Appropriations and Armed Services Committees would have to retain some jurisdiction, but Foreign Relations could be phased out. A couple of members of the latter committee will probably be appointed to an intelligence committee (informally - no requirement for their appointment).
6. Committee should have prior information on major activities.

Senator Frank Church (D., Idaho)

Wednesday, January 21, 1976

1. Supports provisions of S. 2893.
2. Constitutionally, a committee of Congress could not have a veto power over covert activities.
3. Congress should enact a carefully limited law to better protect intelligence information from disclosure by present and former intelligence personnel.
4. No firm opposition to a joint committee.
5. He seriously questions whether a matter brought before the full Senate in a secret session can be kept secret. Therefore, serious thought should be given to permitting the Committee to decide whether to release information.
6. Might support Senator Percy's suggestion that a new committee have full appropriations authority.

Senator John Tower (R., Tex.)

Wednesday, January 21, 1976

1. S. 2893 is too simplistic an approach.
2. Enormous problems will result from separating intelligence activities from other activities of the same agency.
3. Existing committees can and should perform oversight.
4. Questions principle of Senate's right to disclose classified information.
5. Opposes prior notification requirement.

Senator Howard Baker (R., Tenn.)

Wednesday, January 21, 1976

1. New single-purpose oversight committee is required.
2. Supports the concept of a separate Senate committee, which will follow up Church Committee's inquiry.
3. Supports:
 - a. Membership limited to nine Senators;
 - b. Fixed ratio of majority to minority;
 - c. Limitation on membership of six years;
 - d. Limitation on staff tenure;
 - e. "Fully and currently informed" requirement and requirement that Executive furnish "any information requested";
 - f. Annual authorization requirement;
 - f. Jurisdiction of one committee over all foreign and domestic intelligence activities;
 - h. provision for representative of President to sit in on the committee's meetings.
4. Opposes prior notification requirement.
5. Opposes Senate authority to veto covert actions (believes this unconstitutional).
6. Believes House and Senate acting together have the authority to release information. Has grave doubts that the Senate by itself can release information. Is certain that a Senate committee does not have that power.
7. Would support a criminal sanction against disclosure by committee staff.

Mr. Nicholas Katzenbach

Former Attorney General of the United States

Thursday, January 22, 1976

1. Executive needs substantial discretion in intelligence matters, but must be accountable.
2. Endorses a joint committee, with jurisdiction of national security activities of FBI, and with legislative and budgetary responsibilities.
3. Should be a moratorium on covert action, as reporting requirements under present law make it impossible for Executive to pursue such activities, and because we need a better consensus on foreign policy objectives.
4. Committee should not have veto power over covert activities, and should not have prior notification, but only review these activities "a couple of years afterward."
5. Congress cannot constitutionally delegate to a committee the authority to approve or disapprove an act of the Executive. Overall, Congress has enormous power and Executive has very little other than that delegated by Congress. Congress can do "about anything it wants."

Mr. David Phillips, President

The Association of Retired Intelligence Officers

Thursday, January 22, 1976

1. Cited statistics from a poll of American Retired Intelligence Officers members. Relevant findings:

a. 94 percent said final declassification authority should rest with the Executive

b. 88 percent support the concept of a permanent joint committee to oversee intelligence; 10 percent want an intelligence committee in each House; only 1 percent is happy with the present arrangement

c. 70 percent believe knowledge of covert action operations should be restricted to ten or less Members of Congress; the remaining 30 percent believe no more than twenty Members should know

d. 3 percent believe Congress should be briefed in advance of covert operations and have a veto power. 56 percent want Congress to be briefed in advance and have the opportunity to comment, but not have a veto power. 39 percent want Congress briefed after the fact.

2. A new intelligence committee would bolster the effectiveness and reputation of the intelligence agencies.

The Honorable Dean Rusk

Former Secretary of State

Thursday, January 22, 1976

1. Wants Congress to rewrite National Security Act, but not this year, because of inevitable partisanship in an election year.
2. Supports a Joint Committee on Intelligence. Some representation from other relevant committees would be useful.
3. Stresses need for secrecy, despite past abuses.
4. It would be a good idea for the Executive Branch to consult with a discreet Joint Committee in advance of a covert action undertaking.
5. Statutory members of the National Security Council should keep Joint Committee "properly" informed.
6. Opposes annual authorization requirement.

Mr. McGeorge Bundy

Former Special Assistant to the President

for National Security Affairs

Friday, January 23, 1976

1. New committee is needed, and he prefers a joint committee.
2. Adequate rotation of membership will prevent co-option.
3. Primary focus of a new committee should be CIA and NSA, and should be less directly concerned with the other foreign intelligence agencies. The FBI should not be included.
4. Main elements of the intelligence budget do not need to be secret.
5. Some information--such as the names of secret agents--should be off-limits to the committees.
6. No longer possible to conduct large covert operations. Some could be handled overtly. Major cause of our inability to conduct such operations is the lack of consensus about U.S. foreign policy.
7. A covert activity will not stay covert if it must go before the entire Senate.

Mr. Clark Clifford
Former Secretary of Defense
Monday, January 26, 1976

1. Recommends establishing an effective joint Senate-House committee.
One committee can better protect necessary secrets.
2. Maximum size of a joint intelligence committee should be 14 members. Moderate rotation of members would be desirable.
3. Committee should not have designated senior members from other committees; they have no time to spend on intelligence matters.
4. Oversight committee should be informed in advance of covert actions.
5. President should consider congressional opposition to a covert action, but constitutionally he has the power to proceed with it.
6. Covert action is occasionally necessary, and the capability must be preserved. However, there have been too many such operations.

Mr. Clarence Kelley, Director
Federal Bureau of Investigation

Monday, January 26, 1976

1. FBI cannot agree to unlimited access by Congress to its files; would deter cooperation of citizens and foreign governments. Would not like a permanent committee to have as much access as the Senate Select Committee has had. Method to insure accountability is sworn testimony of FBI Director.

2. Congress should consolidate oversight, to eliminate duplication and save money.

3. Supports one oversight committee for both foreign and domestic intelligence. Splitting FBI functions and responsibilities between two committees would be imprecise, confusing, and a hardship on the FBI.

Mr. John McCone, Former Director

Central Intelligence Agency

Monday, January 26, 1976

1. Oversight committees he dealt with gave constructive guidance.
2. New oversight to be effective must be accompanied by consensus on what role U.S. should play in the world.
3. Supports creation of a powerful Joint Committee with exclusive oversight responsibility. Committee should have Chairman and ranking minority members of the two Armed Services and Foreign Relations and International Relations Committees as members.
4. This Committee should be fully and currently informed of intelligence activities.
5. Under these circumstances it would be unnecessary to pass this information to others in the Congress.
6. Prior notification of covert action no problem if leak-proof atmosphere was assured. As DCI, he often discussed covert operations in advance, although this was not policy.
7. A new oversight committee should be limited to foreign intelligence. The question of whether to put the counterintelligence arm of the FBI with foreign intelligence is a tougher one. No firm answer given.
8. Congress should have the right of veto over covert activities.
(Senator Brock explicitly disagreed.)

Robert F. Ellsworth

Deputy Secretary of Defense

Tuesday, January 27, 1976

1. Supports notion of strong oversight.
2. Numerous committees undertook oversight of DOD intelligence last year. Two DOD concerns are duplication of effort and security.
3. DOD wants one strong oversight committee.
4. Supports idea of truly independent community-wide IG for intelligence.
5. Rejects concept of obligation of Executive to keep Congress "fully and currently" informed. DOD satisfied needs of Senate Select Committee without such a general charge. Supports language that Executive Branch would supply "information and timely intelligence necessary for ... sound decisions affecting the security of the nation." (from S. Res. 21)
6. Prior notification requirement represents unacceptable infringement on DOD authority. Emphasizes that DOD does not regard covert action or assassination as intelligence. Concerned that committee would designate every trivial matter as requiring prior notification. DOD would not object to covert actions being briefed to Congress before they begin.
7. Imposition of an annual authorization requirement for DOD intelligence would be extremely difficult and confusing for DOD.

Richard Helms

Ambassador to Iran

Tuesday, January 27, 1976

1. In his tenure there was not enough Senate legislative oversight.
2. Appropriations oversight was better.
3. Potential political problems of those Members who know of covert actions.
4. Executive should consult in advance on major programs with Congress to avoid a later cut-off of funds.

Raymond S. Calamaro
on behalf of the
Committee for Public Service
Monday, February 2, 1976

1. Endorses separate intelligence committees with full legislative jurisdiction.
2. Committee should have authorization authority.
3. Committee should have rotating chairmen - senior majority party Senator is chairman for four years, followed by a four-year term for the next most senior, etc.
4. Members and staff must have access to all information to perform their function.
5. A procedure must be established whereby either House, on the recommendation of their intelligence committee, could release information in its possession.

Senator Alan Cranston (D., Calif.)

Monday, February 2, 1976

1. Should have separate Senate and House committees so one is not co-opted.
2. Proliferation of committees with part of oversight responsibility has partly been the cause of failed oversight.
3. Endorses S. 2893, except covert action provision.
4. Authorization authority is particularly important.
5. Overall budget figure for each agency should be published.
6. Senate should have authority to disapprove a covert action and thereby halt it, under the following procedure:

If a majority of the committee votes to halt a project, it must stop unless the President appeals to the full Senate. If he does, a secret session votes to determine whether it should continue. If the committee votes support of the program, three members can bring the issue before the full Senate.
7. Prior notification requirement in S. 2893 should not be dropped in a War Powers situation.
8. Ratio of majority to minority members should vary with partisan make-up of Senate, as does the make-up of other committees.
9. Very critical of Congress' lax oversight.

Mr. Morton H. Halperin, Director

Project on National Security and Civil Liberties

Monday, February 2, 1976

1. Oversight must be improved to avoid serious and regular abuses of intelligence agencies such as we have witnessed.
2. Oversight committees should have jurisdiction of both foreign and domestic intelligence, because of their interrelationship, e.g. Operation CHAOS.
3. The problem is not leaks, it is too much secrecy in the Executive Branch.
4. Most leaks come from Executive Branch.
5. Oversight committee must have access to all information and have authority to release any information. Senate Select Committee should be the example.
6. Authorization authority is essential to effective oversight.
7. Intelligence agencies need clearer charters.
8. Executive tries to keep from Congress more information than necessary about intelligence activities.
9. Aid to foreign governments or groups, e.g. Portugal, Angola, needn't be secret. We are able to continue aid to Portugal, despite publicity because consensus in U.S. is that we should aid the democratic forces there. Covert aid to Angola has been stopped, but Kissinger said he may ask for overt aid. The real secrets are the resolution of our cameras, the names of cooperating foreigners, and these are not leaked.
10. Separate Senate and House committee are preferable to a joint committee.
11. NSC has not been an effective oversight tool of intelligence agencies.

Senator Gaylord Nelson (D., Wis.)

Monday, February 2, 1976

1. The issue of controlling domestic surveillance is the critical one before the committee. He promised to fight on the floor any proposal to combine foreign and domestic intelligence in one oversight committee.

2. Domestic and foreign surveillance involve different considerations and the subjects should not be combined under one oversight committee; domestic surveillance questions are easy, foreign exceedingly complex.

3. Agencies will keep their activities in line because of the knowledge they will have to testify on them before the committee.

Representative Robin L. Beard (R., Tenn.)

Tuesday, February 3, 1976

1. Submitted history of Harrington complaint.
2. Experience of his complaint shows Congress does not have the will to take action against its Members.
3. "We must be willing to establish tough, uncompromising rules and relentlessly pursue violators."
4. "Our rules are sadly inadequate to deal with this problem."
5. Oversight principle should be that the minimum number of people should be involved.
6. Penalty for unauthorized disclosure by a Member should be immediate expulsion.
7. There should be security clearances for staff and stiff penalties for disclosure. Lie detector tests should be administered to staff suspected of leaks.
8. Stiff penalties for disclosure by Executive Branch personnel should be enacted.
9. Favors joint committee.

Tuesday, February 3, 1976

1. Disclosure of aid to Italy is a direct result of Hughes amendment.
2. Oversight should remain in Armed Services Committee, although that Committee has not done too thorough a job, because material handled is so highly classified there is a constant danger of exposing it. Not strongly opposed to a new committee, only to some of the proposals for setting it up.
3. There has been too much disclosure, as of assassination plans.
4. Will oppose any general intelligence legislation which does not:
 - a. repeal or modify Hughes amendment
 - b. establish criminal sanctions on disclosure, including by Members and staff
 - c. a flat prohibition against any intelligence agency revealing the name of an agent to Congress or any of its Members or committees.
5. Objections to a new committee:
 - a. Senate does not need another committee
 - b. Members to be appointed by majority and minority leaders is contrary to Senate practice where appointments are made by Democratic Steering Committee and Republican Committee on Committees
 - c. Rotating membership is assault on seniority system and inhibits development of expertise
 - d. Set-up of chairman is not according to Senate practice, particularly feature that Vice Chairman (minority party) assumes chairmanship in absence of Chairman
6. Opposes limit on staff tenure
7. Opposes committee authority to declassify and release information.
8. Opposes prior notification of covert action.

Representative Michael Harrington (D., Mass.)

Tuesday, February 3, 1976

1. Continue both select committees for remainder of 94th Congress.
2. Clear delineation of intelligence agency's authority should precede oversight decisions.

Senator Ernest F. Hollings (D., S. C.)

Tuesday, February 3, 1976

1. A member of Hoover Commission (1954-55), which recommended a joint committee.
2. Senate leadership should know about intelligence activities.
3. Oversight should have as its cornerstone an independent commission - 10 Members of Congress (Senate and House leadership and Committee leadership) plus 5 appointees of Executive Branch. (Ribicoff disagreed with this idea.)

Senator Strom Thurmond (R., S. C.)

Tuesday, February 3, 1976

1. Work of the Senate Select Committee has inspired the Armed Services Committee to reflect upon its own record, and in retrospect, the Armed Services Committee could have done a better job.

2. A new committee would poorly serve intelligence needs of U.S. Separate standing committee would hobble executive initiative, unduly centralize our intelligence efforts, cripple capacity for covert action.

3. Church committee proposal evinces unreasonable distrust of Executive.

4. Church bill pulls an integral part of DOD (intelligence) from the remainder of the organization.

5. Opposes:

- a. appointing Members by leadership
- b. limiting Senatorial and staff service to six years
- c. permitting service on proposed committee regardless of other committee assignments
- d. declassification procedures
- e. lack of sanctions for disclosure
- f. prior notification procedures (violates separation of powers doctrine).

The Honorable Henry A. Kissinger

Secretary of State

Thursday, February 5, 1976

1. Sounder relationship between Executive and Congress on foreign policy and intelligence must evolve. Mutual trust is required.

2. The most important ingredient of successful oversight is an atmosphere where information given in confidence will remain in confidence. Any legislation on oversight must include safeguards.

3. Goal of oversight is to insure that intelligence activities are consistent with basic values of the U.S. This is particularly important because intelligence does not lend itself to extensive public debate.

4. Oversight must not, for political and practical reasons, encroach on Executive's prerogatives. Section 662 reflects the correct relationship (Executive reporting to Congress), but number of committees involved should be reduced.

5. The best oversight is concentrated--ideally in one joint committee.

6. Specifically endorses sources and methods legislation.

7. Believes a wise administration would consult in advance with Congress on covert action, but opposes a requirement that it do so in all cases. Regarding congressional veto power, President should take congressional opposition into consideration, but should have the right to proceed.

Senator Walter Huddleston (D., Ky.)

Friday, February 6, 1976

1. The Senate must develop internal sanctions for unauthorized disclosure by its Members.
2. Plans to offer to the committee specific suggestions for procedures and sanctions against unauthorized disclosure by a Member or staff and will offer such sanctions on the floor if not adopted in Committee.
3. Plans to offer separate legislation providing criminal penalties for the disclosures of classified information by former employees of intelligence agencies.

Honorable Edward H. Levi
Attorney General of the United States
Friday, February 6, 1976

1. FBI should not be split between two oversight committees, as the various activities are too interrelated. The Bureau's counterintelligence function is basically enforcement of the espionage laws. A new oversight committee on intelligence should not assume any jurisdiction of the FBI.

2. Authority of CIA to conduct covert action is "probably clear enough. That doesn't mean it couldn't be made clearer."

3. Joint committee is preferable.

4. Executive privilege is constitutionally grounded as an incident of Executive power, and is therefore not subject to legislative amendment. Therefore, the provision in S. 2893 that the Executive keep the committee "fully and currently informed" cannot override this basic constitutional limitation. Of course, whether a particular claim of Executive privilege is valid can be subject to litigation, although it is not clear whether a court would accept jurisdiction over such an issue.

5. Urges that the proposed committee have flexibility to compromise over what information it receives and under what conditions it receives it.

6. Adequate provisions for secrecy would be the cornerstone of a cooperative relationship between the proposed committee and the Executive.

7. As long as Members of Congress and staff have the power to disclose information, although they may not have the authority (power because of the immunity clause of the Constitution), one may expect serious reservations

on the part of the Executive to furnish classified information. S. 2893 properly prohibits disclosure unless authorized, and sets up procedures for authorization. However, S. 2893 would leave the final decision with the Committee or with the Senate. It would be unwise to give five members of any committee such power. As a practical matter, it is unlikely that information would remain secret if referred to the full Senate, even if the Senate voted against disclosure. Other alternatives:

a. Case amendment provides that Executive transmits international agreements to Congress, under an injunction of secrecy if necessary, such injunction to remain in effect until the President determines it is no longer needed. Congress retains its ability to use its political power to get injunction lifted.

b. Pike Committee formula.

Whatever means adopted, there must be a means to ensure the system is not circumvented by unauthorized disclosures. A starting point would be a clear statement that Members or staff responsible for leaks will be subject to penalty.

OPENING REMARKS OF SENATOR BILL BROCK AT GOVERNMENT OPERATIONS HEARINGS
ON INTELLIGENCE OVERSIGHT

MR. BROCK. MR. CHAIRMAN, I WOULD LIKE TO COMMEND YOU FOR STARTING THESE HEARINGS ON THE FORMATION OF A NEW INTELLIGENCE OVERSIGHT COMMITTEE. I THINK THAT WE HAVE ALMOST UNIVERSAL AGREEMENT THAT SOME KIND OF NEW OVERSIGHT COMMITTEE IS INDEED NEEDED IN CONGRESS FOR US TO PROPERLY EXERCISE OUR PROPER CONSTITUTIONAL ROLE.

I ANTICIPATE THAT THE THRUST OF THE HEARINGS AND THE TESTIMONY OF THE WITNESSES WILL BE SLANTED TOWARD THE "SCOPE" OF A NEW COMMITTEE -- SHOULD IT INCLUDE JUST THE CIA ACTIVITIES, ALL INTELLIGENCE ACTIVITIES, COVERT PROCEDURES, ETC., ETC.?? THIS IS A VERY IMPORTANT QUESTION AND ONE THAT I AM EAGER TO HEAR FROM THE WITNESSES.

HOWEVER, WHILE "SCOPE" IS IMPORTANT, THE EVENTS OF LATE HAVE SHOWN THAT THERE IS AN EQUALLY IMPORTANT PART OF THIS QUESTION OF CONGRESSIONAL OVERSIGHT AND THAT HAS TO DO WITH CONGRESSIONAL "RESPONSIBILITY". IT IS VERY EASY FOR US TO LEGISLATE OURSELVES THE "KNOWLEDGE", BUT WE MUST ALSO BE PREPARED TO ACCEPT THE "RESPONSIBILITY."

THIS IS WHAT I AM CONCERNED WITH TODAY AND I AM INTRODUCING A BILL THAT WILL GIVE THE NEW COMMITTEE THE PROPER SAFEGUARDS NEEDED TO GO ALONG WITH KNOWLEDGE IT WILL GAIN.

BRIEFLY, THESE SAFEGUARDS ARE THE FOLLOWING:

THIS SHALL BE A NONPARTISAN COMMITTEE CONSISTING OF THE MAJORITY AND MINORITY LEADERS, PLUS THE CHAIRMAN AND RANKING MEMBERS OF APPROPRIATIONS COMMITTEE, ARMED SERVICES, FOREIGN RELATIONS AND GOVERNMENT OPERATIONS COMMITTEES. THIS INDIRECTLY SOLVES THE PROBLEM OF THE EXECUTIVE BRANCH HAVING TO INFORM TOO MANY COMMITTEES.

MY BILL DIRECTS THAT IF ANY MEMBER BREAKS HIS TRUST, HE WILL BE SUSPENDED WHEN CHARGES ARE BROUGHT BY AT LEAST ONE MEMBER FROM EACH PARTY. THE CASE WILL AUTOMATICALLY BE REFERRED TO THE SENATE STANDARDS COMMITTEE AND DISCIPLINARY ACTION SHALL NOT EXCLUDE EXPULSION FROM THE SENATE ITSELF.

FOR RELEASE OF INFORMATION, I HAVE THE FOLLOWING SAFEGUARDS:

- (1) ANY REPORT, PRESS RELEASE, ETC., RELEASED TO THE PUBLIC MUST BE APPROVED BY AT LEAST A 3/5 MAJORITY OF THE COMMITTEE WITH AT LEAST TWO FROM EACH PARTY;
- (2) FOR MATERIAL RELEASED OVER THE OBJECTION OF THE ADMINISTRATION, A 4/5 VOTE WILL BE REQUIRED INCLUDING AT LEAST 3 FROM EACH PARTY. IN ADDITION, THIS MATERIAL MUST BE APPROVED BY THE SENATE;
- (3) FOR MATERIAL RECEIVED UNDER "PRIOR NOTIFICATION" PROCEDURES A UNANIMOUS VOTE OF THE COMMITTEE WILL BE REQUIRED PLUS A 3/5 VOTE OF THE SENATE.

STAFF SAFEGUARDS:

- (1) NONE SHALL BE HIRED WITHOUT THE APPROVAL OF BOTH THE CHAIRMAN AND THE VICE-CHAIRMAN;
- (2) ALL STAFFERS MUST HAVE A BACKGROUND INVESTIGATION;
- (3) CLEARANCES WILL ONLY BE GRANTED WITH RECOMMENDATION OF THE STAFF DIRECTOR AND APPROVAL BY BOTH THE CHAIRMAN AND VICE-CHAIRMAN;

- (4) ALL STAFFERS SHALL SIGN A PLEDGE NEVER TO DIVULGE MATERIAL;
- (5) THERE SHALL BE IMMEDIATE DISMISSAL FOR LEAKS OR OTHER INDISCRETIONS ANY TIME A CHARGE IS BROUGHT BY ONE MEMBER OR THE STAFF DIRECTOR;
- (6) VIOLATIONS OF THE PLEDGE NOT TO REVEAL INFORMATION OR FOR LEAKING WILL BE PUNISHABLE BY A SENTENCE OF UP TO 20 YEARS AND/OR A \$100,000 FINE.

WHILE MY BILL DOES CONCENTRATE ON SAFEGUARDS, I AM, NATURALLY, CONCERNED ABOUT MORE SUBSTANTIVE QUESTIONS. THEREFORE, I AM DIRECTING THE NEW COMMITTEE TO SUBMIT TWO REPORTS. ONE SHALL BE ON THE QUESTION AND ADVISABILITY OF AN OVERALL "INTELLIGENCE BUDGET" AND THE OTHER IS A STUDY ON WHETHER THE WHOLE AMERICAN INTELLIGENCE COMMUNITY SHOULD BE REORGANIZED.

FINALLY, I HAVE LONG FELT THAT AT LEAST ONCE A YEAR, THE DIRECTORS OF THE CENTRAL INTELLIGENCE AGENCY, DEFENSE INTELLIGENCE AGENCY AND THE FEDERAL BUREAU OF INVESTIGATION SHOULD BE ALLOWED TO TELL THEIR STORY TO THE AMERICAN PEOPLE. THEREFORE, MY BILL DIRECTS THAT ONCE A YEAR THEY SHALL SUBMIT A PUBLIC REPORT ON COMMUNIST ACTIVITIES WITHIN THEIR RESPECTIVE AREAS.

MR. CHAIRMAN, I AM NOT WEDDED TO EVERY PERIOD AND DOTTED "I" OF MY BILL, AND I MAY WELL CHANGE MY MIND ON SECTIONS AFTER HEARING THE DISTINGUISHED WITNESSES. BUT, I WILL NOT CHANGE MY MIND ON THE FACT THAT WE DO NEED SOME SAFEGUARDS AND I FEEL THAT MY BILL WILL BE USEFUL AS A TOUCHSTONE IN THAT RESPECT.